No. 87-1104

In The

Supreme Court of the United States

October Term, 1987

RALPH KEMP, WARDEN,

Petitioner,

v.

WILLIAM NEAL MOORE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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Petition for Certiorari Filed January 27, 1988
Certiorari Granted April 18, 1988

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STATE OF GEORGIA	)	IN THE SUPERIOR
	)	COURT OF JEFFERSON
vs.	)	COUNTY, GEORGIA.
	)	Indictment Number Three
WILLIAM NEAL MOORE	)	May Term 1974
	)	Charges:
	)	Count #1: Murder
	)	Count #2:
	)	Armed Robbery

ARRAIGNMENT

IN OPEN COURT, June 4, 1974, the Honorable Walter C. McMillan, Jr. Judge, Jefferson Superior Court, Middle Judicial Circuit of Georgia, presiding.

APPEARANCES

FOR THE STATE:

Hon. H.R. Thompson, District Attorney,
Jefferson Superior Court, M.J.C.
Swainsboro, Georgia 30401

FOR THE DEFENDANT:

Mr. Hinton R. Pierce, Esq.,
213 Southern Finance Building
Augusta, Georgia

(p.1) PROCEEDINGS:

THE DEFENDANT, WILLIAM NEAL MOORE, having been brought into Court, and standing before the Bar with his counsel, Mr. Hinton R. Pierce, Esq., and the State having called the case for arraignment;

By The Court: You are William Neal Moore?

By The Defendant: Yes, sir.

By The Court: You are charged here in Jefferson Superior Court in an indictment returned at the May Term nineteen seventy-four by the Grand Jury of Jefferson County Georgia, in County One, that you did on the second day of April nineteen seventy-four, kill one Fredger Stapleton by shooting the said Fredger Stapleton with a certain pistol, contrary to the laws of the State of Georgia, the good order, peace and dignity thereof, and in County Two, that you did, on the second day of April nineteen seventy-four, unlawfully and with the intent to commit a theft, took from the person of (p.2) Fredger Stapleton five thousand dollars in cash money, a single barrel shotgun, and all of the total value of five thousand, seven hundred and thirty dollars, by the use of a pistol, contrary to the laws, peace and dignity thereof. Now, who is your lawyer?

By The Defendant: Mr. Pierce.

By The Court: All right, your attorney is Mr. Pierce, is that the gentleman standing next to you?

By The Defendant: Yes, sir.

By The Court: You understand the nature of these charges against you?

By The Defendant: Yes, sir.

By The Court: And how do you plead, guilty or not guilty?

By The Defendant: Guilty.

By The Court: You plead guilty?

By The Defendant: Yes, sir.

By The Court: Have you advised him the consequences of a plea of guilty, Mr. Pierce?

By Mr. Pierce: I have, yes, sir.

By The Court: He understands that he could be sent to the electric chair?

By Mr. Pierce: Yes, sir.

By The Court: Or life imprisonment?

By Mr. Pierce: Yes, sir.

By The Court: All right, what do you say, Mr. Thompson?

By The District Attorney: If Your Honor please, the State will have no objection to accepting at this time pleas of guilty, but for the sentencing to be imposed by a (p.2) Jury. The State intends in this case to seek the dealth penalty, and the State will not waive that right. If the Court wants to hear the facts and make a determination, then it's within the purview of the Court on a plea of guilty to do so, but other than the Court accepting the responsibility for a total sentence, we would ask that a Jury be impannelled for the purpose of setting punishment.

By That Court: What do you say to that, Mr. Pierce?

By Mr. Pierce: Your Honor, we take the position that the Defendant has the right to waive a Jury trial. Under the laws of Georgia, any person who is indicted for an offense punishable by death can enter a plea at anytime after indictment has been returned, section

twenty-six, thirty-one ough two. It says punishment can be imposed by the Judge. Under this position that we take, we waive any Jury trial.

By The Court: What do you say, Mr. Thompson?

By The District Attorney: Well, that puts it directly into the lap of the Court.

By The Court: All right, sir, let the plea be entered. If I'm supposed to do it, then I will weigh it and decide.

By The District Attorney: We will let the plea be entered.

By The Court: All right.

WHEREUPON, Mr Pierce and the Defendant sign the plea.

By The Court: I think you should complete this form here.

WHEREUPON, THE DEFENDANT executed the questionnaire form, attached hereto as Exhibit A, page eight.

(p.4) By The Court: All right, sir, did you complete that form?

By The Defendant: Yes, sir.

By The Court: Your name is William Near Moore?

By The Defendant: Yes, sir.

By The Court: You are charged with the offense of Murder and Armed Robbery here in Jefferson Superior Court?

By The Defendant: Yes, sir.

By The Court: And are you able to hear and understand my statements and questions?

By The Defendant: Yes, sir.

By The Court: Are you now under the influence of any alcohol, drugs, narcotics, or other pills?

By The Defendant: No, sir.

By The Court: Do you understand what you are charged with in these cases, that is, Armed Robbery and Murder?

By The Defendant: Yes, sir.

By The Court: Do you understand that upon your pleas of guilty you could be imprisoned for as much as life or given death by the electric chair?

By The Defendant: Yes, sir.

By The Court: Has the District Attorney, or your lawyer, or any policeman, law officer or anyone else made any promise to you to influence you to plead guilty in these cases?

By The Defendant: No, sir.

By The Court: Has the District Attorney or your lawyer or any policeman, law officer or anyone else made any threat to you to influence you to plead guilty in (p.5) these cases?

By The Defendant: No, sir.

By The Court: Have you had time to confer, and have you conferred with your lawyer about these cases?

By The Defendant: Yes, sir.

By The Court: And who is your lawyer?

By The Defendant: This man right here, sir.

By The Court: Hinton Pierce?

By The Defendant: Yes, sir.

By The Court: Are there witnesses that you desire to appear in your behalf in these cases?

By The Defendant: No, sir.

By The Court: Do you authorize and instruct your lawyer to enter pleas of guilty?

By The Defendant: Yes, sir.

By The Court: And how do you plead to these charges, guilty or not guilty?

By The Defendant: Guilty.

By The Court: Are you satisfied with the services of your attorney as rendered in your behalf?

By The Defendant: Yes, sir.

By The Court: And are you in fact guilty of the offenses of Murder and Armed Robbery?

By The Defendant: Yes, sir.

By The Court: And have these questions been read to and explained to you?

By The Defendant: Yes, sir.

(p.6) By The Court: Do you understand also that you have a right to be tried by a Jury?

By The Defendant: Yes, sir.

By The Court: And if that Jury in fact determines that you are guilty, then they would make the determination as to whether or not you would serve life in the penitentiary or death in the electric chair?

By The Defendant: Yes, sir.

By The Court: Or be turned loose, if they find you not guilty, of course, they would turn you loose.

By The Defendant: Yes, sir.

By The Court: Now, you understand that you have the right to be tried by that Jury and they make that determination, the Jury of twelve people that would be impannelled from this county?

By The Defendant: Yes, sir.

By The Court: Now, you are waiving that right of a Jury trial?

By The Defendant: Yes, sir.

By The Court: And the determination of punishment?

By The Defendant: Yes, sir.

By The Court: And you are placing that responsibility on me, that is the Judge of the Court, to decide whether or not you receive death in the electric chair or life imprisonment?

By The Defendant: Yes, sir, I do.

By The Court: You are making a voluntary waiver of that?

By The Defendant: Yes, sir.

(p.7) By The Court: You have discussed that with your attorney?

By The Defendant: Yes, sir, I did.

By The Court: Now, raise your right hand, please?

WHEREUPON, THE DEFENDANT raises his hand and the oath was administered by the Court.

By The Court: The statements that you have just made to me and the statements contained in this affidavit are true, so help you God?

By The Defendant: Yes, sir.

By The Court: So help you God?

By The Defendant: So help me God.

By The Court: All right, I'll ask you that you sign this down at the bottom there in the presence of the Clerk, date it and sign it.

WHEREUPON, THE DEFENDANT signs the affidavit in the presence of the Clerk, attached hereto as Exhibit A, page eight.

By The Court: All right, when do we want to hear this?

By The District Attorney: Any time will suit us, Your Honor.

By Mr. Pierce: Your Honor, I would like to have the opportunity to have some of his family to come down.

By The Court: Well, of course, and I think I will have to hear all of the evidence, and make the determination based on hearing the evidence, I couldn't just arbitrarily. . . .

By The District Attorney: You will have to hear all the evidence and make the determination as to whether or not there is sufficient evidence, you have to make an independent determination and then impose whatever sentence the Court wishes.

STATE OF GEORGIA	)	IN THE
COUNTY OF JEFFERSON	)	SUPERIOR COURT
STATE OF GEORIGA	)	JUNE TERM, 1974
	)	CASE NO. ___
VS.	)	OFFENSE Murder &
WM. NEAL MOORE	)	Armed Robbery
	)	TRANSCRIPT

The defendant, being sworn, makes the following answers to the Court:

(1) Are are able to hear and understand my statements and questions?
Answer: Yes

(2) Are you now under the influence of any alcohol, drugs, narcotics or other pills?
Answer: No.

(3) Do you understand what you are charged with in this case?
Answer: Yes.

(4) Do you understand that upon your plea of guilty you could be imprisoned for as much as life years? (or Death)
Answer: Yes.

(5) Has the District Attorney, or your lawyer, or any policeman, law officer or anyone else made any promise to you to influence you to plead guilty in this case?
Answer: No.

(6) Has the District Attorney, or your lawyer, or any policeman, law officer or anyone else made any threat to you to influence you to plead guilty in this case?
Answer: No.

(7) Have you had time to confer, and have you conferred with your lawyer about this case; and who is your lawyer?
Answer: Yes, My Lawyer is Hinton Pierce, ___, Augusta, GA.

(8) Are there witnesses you desire to appear in your behalf in this case?
Answer: No.

(9) Do you authorize and instruct your lawyer to enter a plea of guilty?
Answer: Yes.

(10) How do you plead to the charge, guilty or not guilty?
Answer: Guilty.

(11) Are you satisfied with the services of your attorney as rendered in your behalf?
Answer: Yes.

(12) Are you in fact guilty?
Answer: Yes.

(13) Have these questions been read to and explained to you?
Answer: Yes.

I have read or heard read all of the above questions and answers and understand them, and the answers shown are the ones I gave in open court, and they are true and correct.

/s/ William N. Moore
DEFENDANT

Sworn to and subscribed before me this 4th day of June, 1974.

Illegible.

Illegible.

CERTIFICATE

The undersigned Presiding Judge hereby certifies:

I. That the above-named defendant was sworn in open court and the questions were asked him as set forth in the foregoing transcript, and the answers given thereto by said defendant are as set forth therein.

II. That the defendant, William Neal Moore, being represented by attorney Hinton R. Pierce, who was ~~(court appointed) or~~ (privately employed), plead guilty ~~(nolo contendere)~~ as charged in the (bill of Indictment) ~~(Accusation) (or) to the lesser offense of~~ Murder & Armed Robbery, and in open court, under oath, further informs the Court that he is and has been (1) fully advised of his rights and the charges against him; (2) the maximum punishment for said offense charged, and for the offense to which he pleads guilty ~~(nolo contendere)~~; (3) that he is guilty of the offense to which he pleads guilty ~~(nolo contendere)~~; (4) that he authorizes a plea of guilty ~~(nolo contendere)~~ to said charge; (5) that he has had ample time to confer with his attorney, and to subpoena witnesses desired by him; (6) that he is ready for trial; (7) that he is satisfied with the counsel and services of his attorney.

And after further examination by the Court, the Court ascertains, determines and adjudges, that the plea of guilty ~~(nolo contendeter)~~ by the defendant is freely, understandingly and voluntarily made, and was made without undue influence, compulsion or duress, and without promise of leniency. It is, therefore,

ordered that his plea of guilty ~~(nolo contendere)~~ be entered on the minutes, and that this Transcript and Certificate be filed with the (indictment) ~~(Accusation)~~.

Date: July 17, 1974.

/s/ Walter C. McMillan, Jr.
JUDGE PRESIDING

Filed in Office
July 17, 1974
Illegible

By The Court: All right, we can hear the evidence on July the seventeenth.

THERE BEING NOTHING FURTHER AT THE ARRAIGNMENT HEARING, JULY THE SEVENTEENTH WAS SET FOR HEARING PRELIMINARY TO SENTENCING.

COURT REPORTER'S CERTIFICATE

GEORGIA, JEFFERSON COUNTY:

I hereby certify that the foregoing is a true, complete and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 23rd day of July 1974.

/s/ George E. Clark

FILED IN OFFICE THIS 14 DAY OF August 1974.

/s/ Mildred Illegible, Deputy
Clerk, Jefferson Superior Court

GEORGIA, JEFFERSON COUNTY:

I hereby certify that the above and foregoing pages contain the original copy of the Court Report's transcript as filed in this office.

Witness my signature and the seal of said Court. affixed this the ___ day of ___ 1974.

/s/
Clerk, Jefferson Superior Court

STATE OF GEORGIA	) IN THE SUPERIOR
	) COURT OF JEFFERSON
vs.	) COUNTY, GEORGIA.
	) Indictment Number Three
WILLIAM NEAL MOORE	) May Term 1974
	) Charges:
	) Count #1: Murder
	) Count #2:
	) Armed Robbery

IN OPEN COURT - JULY 17, 1974

A Hearing Preliminary to sentencing, The Honorable Walter C. McMillan, Jr., Judge, Jefferson Superior Court, Middle Judicial Circuit of Georgia, presiding.

REPORTER'S TRANSCRIPT

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APPEARANCES

FOR THE STATE:

Honorable H.R. Thompson,
District Attorney, Superior Courts
Middle Judicial Circuit of Georgia
Swainsboro, Georgia 30401

Mr. John C. Walden, Esq.,
Attorney at Law,
Wrens, Georgia 30833

FOR THE DEFENDANT:

Mr. Hinton R. Pierce, Esq.,
Attorney at Law,
213 Southern Finance Building
Augusta, Georgia 30902

(p.1) PROCEEDINGS:

By The Court: Are you ready to proceed, Mr. Thompson?

By The District Attorney: The State's ready, Your Honor, and I would like to announce that Mr. John C. Walden, an attorney at Law in Wrens, is associated with the State in this matter, being a representative of the family of the deceased.

By The Court: All right, sir. I call the case of the state of Georgia versus William Neal Moore, charged with the offenses of Murder and Armed Robbery. Back on June the fourth, nineteen seventy-four, the Defendant entered pleas of guilty to both counts of burglary and armed robbery, indicating under the pleas as

indicted at the May Term nineteen seventy-four, at that time, Mr. Moore, I believe you completed this form, this affidavit and signed it in the presence of the Clerk, and you swore at that time that you were able to hear and understand the statements and questions, you were not then under the influence of alcohol, drugs, narcotics or other pills, that you understood what you were charged with and that you understood that upon your pleas of guilty you could be imprisoned for as much as life or be given death by electrocution, that the District Attorney, or you lawyer nor anyone else had made any promises to you to influence you to plead guilty in these cases, and that no one had made any threats or (p.2) promises to you to induce you to plead guilty in these cases, that you had had time at that time to talk to your lawyer about these cases, and your lawyer was Hinton Pierce, two thirteen Southern Finance Building, Augusta, Georgia, and stated then that there were no witnesses you desired to appear in your behalf, and that you did authorize and instruct your lawyer to enter pleas of guilty for you in these cases, and you were asked the question, how do you plead to these charges, guilty or not guilty, and you said you were guilty, and that you were satisfied with the services of your attorney as rendered in your behalf, and that you stated that you were in fact guilty of the crimes as alleged in this bill of indictment, and that these questions had been read and explained to you, and in addition to that, I asked you were the statements contained in this affidavit true and correct and they are true and correct today as they were on the fourth of July nineteen seventy-four?

By The Defendant: Yes, sir.

By The Court: Now, you understand, of course, that you have the right to have the case submitted to a Jury and the Jury would determine, if you plead not guilty, the Jury would determine your guilt or your innocence, and should they determine that you are guilty or should you plead guilty and ask the Jury to impose (p.3) the sentence upon you, then later the Jury would be required to pass on the decision as to whether or not you would receive life imprisonment or the electric chair, you have the right, however, to waive Jury trial, throw yourself on the mercy of the Court, and let the Court pass on it in both cases, whether you get life or whether you get the electric chair. I'll tell you now, and put it on record, I'll give you the opportunity to at this time withdraw your pleas, and you can plead not guilty, if you like, and withdraw your plea, and if you plead not guilty, the Jury would determine your guilt or your innocence. In the event they determine that you are guilty, then they would make the decision as to whether or not you would receive death by electrocution or life imprisonment, and I'll give you that opportunity now to change you plea if you like, or if you desire to plead guilty and throw yourself on the mercy of the Jury and let the Jury determine the penalty, I'll give you that opportunity now. If you desire to talk with your lawyer about it further, I will give you ample time to talk to him.

WHEREUPON, THE DEFENDANT confers with his lawyer.

By The Defendant: I want to go ahead and let you make the decision.

By The Court: You want to go ahead and let me make the determination?

(p.4) By The Defendant: Yes, sir.

By The Court: You are freely and voluntarily making this choice?

By The Defendant: Yes, sir.

By The Court: All right, sir I'll sign this certificate here that you are freely, understandingly and voluntarily entering your plea of guilty without undue influence, compulsion or duress and without promise of leniency. All right, sir, before we go into the evidence, what I understand the issues will be in the case, it will be necessary for the State to prove beyond a reasonable doubt that the Defendant did in fact on the second day of April nineteen seventy-four kill Fredger Stapleton with a pistol and that the State would be required to prove beyond a reasonable doubt in Count number two the armed robbery, and I believe you stated at arraignment that you intended to ask for the death penalty?

By The District Attorney: If Your Honor please, it is the position of the State that the plea of guilty is an acknowledgment and an admission by the Defendant as to Count one that he committed that crime and as to count two, that he committed that crime. The State will go into the evidence in order to present to the Court the question as to whether or not there is aggravation in this matter sufficient, under the code section, to require the Court to impose the death penalty. It necessarily follows that the evidence (p.5) of the guilt of the

accused as to the commission of the crime, it necessarily follows that that must be presented to the Court in order for the Court to make its determination as to what the punishment will be, but I do submit to the Court that the pleas of guilty speak for themselves.

By The Court: Right, it would have to be corroborated by the evidence as well.

By The District Attorney: On the question of punishment.

By The Court: What do you say to that, Mr. Pierce?

By Mr. Pierce: Your Honor, I think Mr. Thompson is probably correct as far as the factual situation is concerned. I think we are mainly interested in the punishment, the aggravation and so forth, and although the Defendant has plead guilty, and has thrown himself on the mercy of the Court, I think I should state that any objections that I make, are certainly for the record, and in the event there is an appeal made.

By The Court: I certainly understand that.

By Mr. Pierce: I think I should, at this point, before we go any further, raise the point as to the constitutionality of the new law as written in the State of Georgia, even though realizing that the Supreme Court of Georgia has held it to be constitutional. It has not been held so by the Supreme Court of the United State, and I would like to make that point here.

By The Court: All right, sir I think that would be appropriate, do you not agree with that?

(p.6) By The District Attorney: Objecting on the constitutionality of the act that we are now proceeding under?

By The Court: Right.

By The District Attorney: As is relates to State law?

By The Court: Yes, sir, that would be twenty-seven, twenty-five, thirty-four point one, I believe.

By The District Attorney: The State takes the position that this law as it now rests on the statute books of the State of Georgia is constitutional, that it has been held to the State of Georgia in Coley versus the State in two thirty-one, Georgia page eight twenty-nine, that it has been held to be constitutional.

By The Court: All right, sir, any comment you want to make?

By Mr. Pierce: No, sir, Your Honor, I agree with that, but the only thing I say, the United States Supreme Court has not yet ruled on whether or not the Georgia statute is constitutionao (sic), and I would like to reserve any rights the Defendant might have at a later date if that becomes necessary.

By The Court: All right, sir.

By The District Attorney: We are now, in his reservation of rights as to the constitutionality of the act, proceeding only as to the punishment aspect of the law, am I correct?

By Mr. Pierce: That's correct, Your Honor, as to whether or not the death penalty would constitute cruel and inhumane punishment.

(p.7) By The Court: All right, sir, then let's go into the evidence. Mr. Thompson, call your first witness.

By The District Attorney: All right, sir, I call Dr. George Pilcher.

WHEREUPON, DR. GEORGE PILCHER, called as a witness in behalf of the State, being duly sworn, testified:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q. You are Dr. George Pilcher?

A. I am.

Q. For the record Dr. Pilcher, will you state your professional qualifications?

A. I graduated from Georgia Medical College in nineteen thirty-two, and I have been practicing medicine here in Jefferson County as a general practitioner for fifteen years.

Q. As a general practitioner?

A. Right.

By Mr. Thompson: If Your Honor please, I submit that Dr. Pilcher is a qualified, practicing physician in Jefferson County and is competent to testify as an expert witness in this case.

By The Court: All right, sir, do you have any questions concerning his competency?

By Mr. Pierce: No, sir, Your Honor, we will stipulate that Dr. Pilcher is a competent, practicing physician.

By The Court: All right, sir, his qualifications are admitted.

(p.8) Q. Dr. Pilcher, are you also serving as the Medical Examiner of Jefferson County?

A. Yes, sir, I am.

Q. Dr. Pilcher, did you have occasion to see Fredger Stapleton on or about the third day of April nineteen seventy-four?

A. Yes, sir, I saw the body about one P.M. in the afternoon on the date that the body was found. He was fully dressed, laying on the floor in the bedroom, next to the bed.

Q. Now, was this in the home?

A. This was in the home of the deceased.

Q. All right, sir, would you state the condition of the body at the time you found it?

A. The body was cold and stiff, indicating that he had been dead for several hours. There was a large amount of blood of the floor and on the bed, and he had bullet wounds in the face and chest.

Q. Were you able to determine from your examination of the body the cause of death?

A. Not exactly, because I did not do the autopsy, but I read the report of the autopsy. There were bullet wounds in the chest which was consistent with death.

Q. All right, sir, you have seen the autopsy report that was performed by J. Byron Dawson, Ph.D., Assistant Director of the Crime Lab in Atlanta, Georgia?

A. Yes, sir, I saw the report briefly just a minute ago.

Q. All right, sir, in reviewing the report of Dr. Dawson, (p.9) were you able to come to a conclusion as to the cause of death?

A. The cause of death were the two bullet wounds in the lower part of the body here, the lower part here.

Q. Now, you are pointing to yourself on the left and right side, slightly above the nipple?

A. Just about at the nipple, yes, sir.

Q. All right.

A. The wound in the chest here ruptured the major blood vessel and blead (sic) internally, the heart was not penetrated, both lungs were ruptured, and he had an entry here on the chin which came out from his neck, and it was a small wound which I could not identify, but the autopsy report indicated that it was a bullet wound, but it looked to me like a small, stab wound. The bullet wounds in the chest very likely were the cause of death.

By The District Attorney: Your witness, counselor.

CROSS EXAMINATION

BY MR. PIERCE:

Q. From your examination of the body, were you able to conclude that unconsciousness occurred immediately?

A. I think that that would be impossible. I think he could have lived a few minutes, or a little while after.

Q. All right, the small wounds on the chest, could this have been caused from any type of gun pellets?

(p.10) A. It's possible, I couldn't identify it, they were simply small puncture wounds.

By Mr. Pierce: Thank you.

By Mr. Thompson: Just a moment.

REDIRECT EXAMINATION

BY MR. THOMPSON:

Q. Dr. Pilcher, I ask you to look at this series of photographs identified as State's exhibits one through eight and ask you if you can identify the person which is the subject of those photographs?

A. I can.

Q. And who is that?

A. That's the deceased, Fredger Stapleton.

Q. I'll ask you to indicate whether or not those photographs show the room that you have just testified about?

A. Yes, sir.

Q. Dr. Pilcher, these photographs, one through eight, do they clearly depict the body of Fredger Stapleton as it was at the time you saw it on April the third, nineteen seventy-four?

A. Yes, they do.

By Mr. Thompson: Your Honor, with that, I now offer State's exhibits one through eight in evidence.

Note: Mr. Pierce objected to admission of the photographs and then withdrew his objection; the photographs were admitted without objection.

By Mr. Thompson: Your witness.

(p.11) By The Court: Anything further, Mr. Pierce?

By Mr. Pierce: No, sir.

By The Court: You can come down, Doctor. Call your next witness.

WHEREUPON, AGENT H.E. COOK, called as a witness in behalf of the State, being duly sworn, testified:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q. You are Agent H.E. Cook of the Georgia Bureau of Investigation?

A. Yes, sir.

Q. Were you acting in that capacity on or about April the third, nineteen seventy-four?

A. Yes, sir, I was.

Q. In your official capacity as a special agent of the Georgia Bureau of Investigation, did you conduct an investigation into the death of Fredger Stapleton?

A. Yes, sir, I did.

Q. From whom did you receive the report that prompted you to make this investigation?

A. At two P.M. on April the third, I received a radio call from GSP Thomson, advising me that Chief Agent Herndon wanted me to proceed to Jefferson County to assist the Jefferson County authorities in the investigation of a homicide in Wrens, Georgia. I left Augusta and proceeded on to Wrens, Georgia, and arrived at the scene at two forty-seven that same afternoon.

(p.12) Q. All right, sir, and in your own words, will you relate to the Court the investigation you made and your findings and what you did.

A. Yes, sir. Upon arrival, there were several officers there at the residence, and at that time, Agent Hamilton was also there, we arrived about the same time.

Q. Now who is Agent Hamilton?

A. He's a special agent of the Georgia Bureau of Investigation. I took the names of persons there at the scene, their addresses were obtained, and they were later interviewed. Agent Hamilton began photographing the crime scene, and Sheriff Compton and I began a search of the immediate area of the grounds and the

adjacent houses. When we finished this, we placed a call to GSP Thomson, requesting that a pathologist be summoned from the Crime Lab for the purpose of an autopsy and also that Chief Agent Herndon be advised that he would be required to take photographs of footprints, and this sort of thing. They advised us that Agent Hamilton was enroute and that a pathologist would be called from Atlanta.

I returned to the crime scene and at this time, Agent Hamilton was still taking photographs, we continued the search and at this time, Sheriff Compton moved the body and he and his deputies found three slugs which appeared to be thirty-eight calibre. We noted the position which these were found and marked them on a diagram and preserved them for future evidence. There was also some tennis shoe tracks which had been tracked through the blood there on the floor. These were photographed by Senior Agent Herndon and the linoleum was taken up and preserved along with the other evidence. At this time, (p.13) I radioed GSP Thomson and advised that agents Monahan and Ingram would also be needed. I then began to dust for possible latent prints and was able to recover what appeared to be a portion of a palm print from an open window in the front left bedroom of the house, which we considered to be the possible point of entry. This was also preserved as evidence. We finished the investigation of the crime scene search and at approximately five P.M. on the same day, we secured the residence and locked it and boarded it up.

At this time, Agents Monahan and Ingram had arrived and they interviewed several people around in

the neighborhood and Agent Monahan received information from a young, black female name Glinnis White, and she stated that she had gone to bed early and had been awakened by George Curtis and overheard a consersation between Curtis and her sister, Doris White, during which Curtis had stated that his uncle had been shot. This was several hours before the discovery of the body. We also interviewed Doris White. Her story was different from Glinnis'. Doris stated that Curtis had been at the White residence the previous evening, but he left only one time at approximately eight P.M. to get beer and he returned, staying until approximately two A.M. the next morning and at no time mentioned to her anything about his uncle being shot. During this time, Agents Ingram and Hamilton interviewed a subject named Willie James Wiley of Wrens and he advised them that on the previous evening he had been returning home at approximately eleven thirty P.M. when he noted at the laundromat two vehicles, (p.14) one of which he thought to be a small, red vehicle and noted that there was only one person in the laundromat at that time. As he continued to walk down the road and pass by the Stapleton residence, a subject came out from the Stapleton residence walking toward him on Old Stapleton Road in the direction of the laundromat. He gave the agents a description of this subject, and stated that he thought at first the subject was carrying a walking cane, but as he came closer, noted that is was a shotgun. Agents Ingram and Hamilton also receive the names of Larry Wood, Sammy Douglas, Luman Terrell and Robert Neals from Wiley and were advised that these four boys were riding bicycles in the area at

that time and possibly could relay some information to the agents. Agents Ingram and Hamilton then interviewed these four subjects and they stated that they did remember seeing a vehicle parked at the laundromat which they described as a seventy-two or seventy-three, burnt orange Chevy Nova with a black stripe down the side. At this time, a further check was made and it was found that George Curtis who the White sisters had previously mentioned, fit the description given by Wiley and he also lived almost directly behind the Fredger Stapleton residence. Curtis was picked up at this time for questioning and in the course of questioning, the agents discovered that he had been with a subject named William Neal Moore from Fort Gordon that previous evening at the White residence. Curtis stated that Moore owned a Chevrolet Nova fitting the descrıption and that Moore hi self (sic) fit the description given by Wiley. After further questioning, it was discovered that Moore had spoken to Curtis earlier about the amount of (p.15) money carried by Stapleton and also the persons who lived at the Stapleton residence and other information concerning Curtis' uncle, Stapleton. At this time, going with the information which the agents had accrued, a warrant was issued for William Neal Moore for the murder of Fredger Stapleton.

Q. All right, now, stop right there. Now I presume all this investigation that you have been talking about took place in Wrens, Georgia?

A. Yes, sir.

Q. All right.

A. And we obtained the warrant for William Neal Moore and proceeded to Augusta.

Q. And who went to Augusta with you?

A. Sheriff Compton, Deputy Harrell, Senior Agent Herndon, Agents Monahan, Ingram, Hamilton and myself.

Q. All right, sir, before we go into that, who was it that gave you a description of the subject he saw coming out of Stapleton's residence?

A. Willie James Wiley gave us a description of the subject as being between the ages of eighteen to twenty-five, approximately five feet eight, chunky build, a m edium (sic) to short hair. The subject was wearing pants a light colored shirt, short sleeved without a collar and wearing tennis shoes. He further described the individual as being brown skinned, what he referred to as pecan tan.

Q. All right, sir, was anything said about a shotgun?

A. Yes, sir, Wiley stated that when he first observed the young, black male leaving the yard and entering the Old (p.16) Stapleton Road and walking toward Georgia seventeen, he first thought the man was carrying a walking stick, tapping it on the ground, which he later observed and was able to denote that it was a single barrel shotgun carried in a manner as such that it would look like a walking stick.

Q. And what did you observe in the residence about the shotgun?

A. In the living room, there was a table in the middle of the room. I noticed what appeared to be a shotgun blast which struck the pedestal of this table in the living room, and from the direction of the shot, it appeared as though the blast came from the bedroom in which Stapleton was lying, through a doorway, struck the pedestal of the table, and was absorbed by a sofa which was directly across the room.

Q. All right, sir, now who gave you the description of the car?

A. There were four, young black males riding bicycles at this time, around eleven thirty P.M., who were Larry Wood, Sammy Douglas, Luman Terrell and Robert Mills. These subjects stated that they were riding their bicycles that night and they rode by the washerette on the corner of the Old Stapleton Highway and Georgia Highway Seventeen, and observed, parked in the washerette parking lot, an orange colored Nova, approximately a nineteen seventy-three or nineteen seventy-four model, two door, with a black stripe running from the front to the rear of the vehicle on each side. The car was further described as being a dark orange, burnt orange type in color. And they further stated they observed a black, male getting into the (p.17) vehicle with short hair and driving off in the direction of Wrens on Georgia Seventeen.

Q. All right, sir, and I believe you made a drawing of the residence of Fredger Stapleton?

A. Yes, sir, I did.

Q. And is this the drawing you made?

A. Yes, sir, it is.

Q. All right, I'll identify that as State's number nine. And you also made a diagram indicating where the body of Fredger Stapleton was found?

A. Yes, sir.

Q. And is this the drawing you made?

A. Yes, sir, it is.

Q. All right, I'll identify that as States (sic) number Ten.

By Mr. Thompson: If it please the Court, I offer these as State's nine and ten?

By The Court: Any objection?

By Mr. Pierce: We have no objection.

By The Court: All right, let them be admitted without objection.

Q. Do they truly and accurately depict the Stapleton home and the location of the body as you found it when you made your investigation of the premises?

A. Yes, sir, they do, but they are not drawn to scale.

Q. All right, sir and did you obtain any fingerprints there at the scene?

A. Yes, sir, as I said, I dusted for latent prints and was able to recover a portion of a palm print from an open window in the front, left bedroom of the residence. We assumed (p.18) this to be the point of entry. This

window was open when we arrived there, and we assumed that was the point of entry.

Q. Did you later secure a print of the same palm from the person of William Neal Moore for comparison?

A. Yes, sir, we did.

Q. And was a comparison made?

A. Yes, sir, it was.

Q. And what was the result of that comparison?

A. The Crime Lab reported the latent prints submitted were found to be identifiable.

By Mr. Thompson: If Your Honor please, I would like to offer this report from the Crime Lab as State's Number eleven.

Note: The crime lab report was admitted without objection at State's exhibit eleven.

By Mr. Thompson: I will ask the court reporter to mark these as State's twelve through fifteen and relate to the Court what those are.

A. State's photograph twelve is a photograph taken from the position of the body, looking through the front door of the bedroom toward the living room.

Q. All right, sir.

A. Photograph thirteen was taken of the table in the living, room, looking into the bedroom. Photograph fourteen was taken of the front porch, showing the open window. State's fifteen was taken from the porch of the Stapleton residence.

Q. Do these photographs truly depict the scene as you found it to be when you went there on April the third, nineteen seventy-four?

(p.19) A. Yes, sir, they do.

By Mr. Thompson: All right, I would like to tender those in evidence.

By The Court: Any objections?

By Mr. Pierce: No, sir, we have no objection.

By The Court: all right, let them be admitted.

Q. All right, sir, now State's exhibits nine and ten, and with particular reference to the location of the body in State's number ten, did you or did you not see the body lying in that position and did you or did you not make a drawing as the result of a visual observation of the body?

A. Yes, sir, I did.

Q. All right, sir, now was the body deceased at that time?

A. Yes, sir, it was.

Q. In what state and county was this body found?

A. Jefferson County, State of Georgia.

Q. In what state and county was the residence of Fredger Stapleton?

A. Jefferson County, State of Georgia.

Q. Now, you started to testify a few minutes ago that you and Sheriff Compton and Deputy Harrell and

Agent Herndon and the other agents that accompanied you to Augusta, and that the deputy sheriffs of Richmond County also assisted you at that time, would you relate where you were and what you did?

A. Yes, sir, we went to the residence of William Neal Moore in the Crystal Springs Trailer Park, we were taken there by George Curtis. Upon arrival, Agent Ingram and Sheriff Compton (p.20) went up to the door and knocked, and William Neal Moore came to the door, and at that time, Agent Ingram advised Moore that a warrant had been issued for his arrest.

Q. What was the warrant for?

A. For murder.

Q. All right, sir.

Q. And at this time, when he came to the door, Agent Ingram advised Moore that he was under arrest for the murder of Fredger Stapleton and was advised by Agent Ingram of his constitutional rights.

Q. Was that done in your presence?

A. Yes, sir.

Q. You say he was advised of his constitutional rights, what was said to him by Agent Ingram in your presence?

A. Agent Ingram advised him that he had the right to remain silent, that anything he said could and would be used against him in a court of law, that he had the right to have an attorney and have him present with him while he was being questioned, and that if he

could not afford to hire an attorney, one would be appointed to represent him by the Court, and that at anytime he wanted to exercise these rights and not answer any questions or make any statements, he could do so.

Q. All right, did he make a statement?

A. At that time, Sheriff Compton asked him where the money was.

Q. Did he make a statement?

A. No, sir.

Q. Did he later make a statement?

(p.21) A. Yes, sir, he did.

Q. When was that statement made?

A. This statement was made when we returned to Wrens.

Q. He made no statement at all relating to this incident while you were at his residence in Augusta?

A. He made no statement there, no, sir.

Q. All right, was he questioned there in Augusta?

A. He was asked where the money was.

Q. Was he questioned by anyone while you were there?

A. Yes, sir.

Q. All right, was he reponsive to the questions that were asked of him?

A. Yes, sir.

Q. Were the statements he made freely and voluntarily made?

A. Yes, sir.

Q. Were they made without being induced by another?

A. Yes, sir.

Q. Were they made without the slightest hope of benefit or the remotest fear of injury?

A. Yes, sir.

Q. All right, I submit, if Your Honor please, that any statement he made was qualified under the Miranda requirements of constitutional law, as it was voluntary, and I submit that it would be admissible subject to cross examination of their admissibility by Mr. Pierce.

By The Court: Do you have any questions, Mr. Pierce?

By Mr. Pierce: No, sir, we will have no objection.

(p.22) By The Court: All right.

Q. Now, relate the conversations that were carried on at the trailer.

A. Sheriff Compton asked Moore where the money and the gun were, and Moore stated at that time that the money was in the floor register in the rear bedroom and the pistol was underneath the mattress in his bed.

Q. Let me go back and ask you one question. When Moore was advised you had a warrant against him for murder, was it related to him who the murdered person was?

A. Yes, sir, it was.

Q. And who was that?

A. Fredger Stapleton.

By Mr. Thompson: If it please the Court, I will ask the court reporter to mark these photographs as State's sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five.

Note: Photographs were identified.

Q. Now, I will ask you to look at each of these photographs and ask you to tell the Court what each one is and identify them by number, if you will.

A. State's sixteen is the register in the floor where the money was.

Q. All right.

A. Picture seventeen is the register after it was opened and the envelopes containing the money were removed.

By The Court: Are these the envelopes?

A. Yes, sir.

(p.23) Q. NOw (sic), what did these envelopes contain?

A. They contained the money.

Q. In twenty dollar bills?

A. Yes, sir.

Q. And how much money?

A. Fifty-seven hundred dollars.

Q. Fifty-seven hundred dollars.

A. Yes, sir.

Q. All right.

A. In photograph eighteen is the bed where the pistol was found, and photograph nineteen is a closeup view of the pistol, and picture number twenty is the single barrel shotgun that was removed from the culvert.

Q. All right, now wait a minute, and let's go with these photographs here and hold the others. Now, how did you know to go where the register is as shown in State's sixteen to open it and get the envelopes of money as shown in State's exhibit seventeen?

A. Moore told us where the money was hidden at, he showed us.

Q. All right, how did you know to go to the bed in State's exhibit eighteen to find the pistol that is shown there and as is enlarged in State's exhibit nineteen?

A. He advised us where the pistol was.

Q. All right, now what is the screwdriver?

A. It was under the bed when we turned it up and looked under there. It was probably used to open the register.

Q. All right, and State's exhibit twenty-one is what?

(p.24) A. That is the culvert where we recovered the shotgun. When we asked Moore where the shotgun was, he stated that he had disposed of the gun in a sewer near his residence, and he went with the officers to a culvert at the corner of Georgetown Drive and Highway One where agents recovered a single barrel, twelve gauge shotgun and four spent cartridge cases from the sewer.

Q. All right, is this the shotgun as shown in State's exhibit twenty?

Note: Shotgun exhibited.

A. Yes, sir, it is.

Q. And whose shotgun is this?

A. Fredger Stapleton's

Q. And how many times had it been fired?

A. It is a single barrel shotgun, and we found four spent cartridge shells.

Q. All right, and is that the gun identified in State's exhibit twenty?

A. Yes, sir, it is.

By Mr. Thompson: If it please the Court, I offer the shotgun at State's exhibit twenty-six.

Note: The shotgun was admitted without objection.

Q. All right, sir, and State's exhibit twenty-one, what is that?

A. That is a picture of the culvert that Moore took us to.

Q. The pistol is still at the Crime Lab?

A. Yes, sir, it is.

(p.25) Q. All right, now, this pistol as shown in State's exhibits eighteen and nineteen was identified by Defendant Moore as what?

A. As being his pistol.

Q. Was it identified by him or not as the pistol that he used to shoot and kill Fredger Stapleton?

A. Yes, sir, it was.

Q. Was the bullet recovered from the body of Fredger Stapleton taken to the Crime Lab?

A. Yes, sir, it was.

Q. And was the pistol sent to the Crime Lab?

A. Yes, it was.

Q. And what were the findings of the Crime Lab?

A. The Crime Lab report proved that the bullet found in the body of Fredger Stapleton was fired from the pistol that belonged to William Neal Moore.

By The Court: I see here in the Crime Lab report that microscopic examination and comparison of the evidence bullets against test bullets fired from the revolver reveals sufficient gross and microscopic similarities to conclude all four evidence bullets were fired

from the revolver. A similar examination of the cartridge cases indicates they were fired in the revolver.

Q. All right, now, let's proceed on to the other pictures which are State's exhibits twenty-two, twenty-three, twenty-four and twenty-five.

A. State's exhibit twenty-two is a picture of a nineteen seventy-three Chevrolet Nova that was parked in the drive at (p.26) Moore's residence and that was reported as being seen in Wrens at the time of the crime. Twenty-three is a picture of the same car showing the black stripe down the side of the car. Twenty-four is the same car. You can see a Fort Gordon sticker there on the bumper, and twenty-five is the same car, a front view.

Q. All right, all these pictures, twenty-two through twenty-five, are pictures of the car that was described to you by the four boys on the bicycles, a description of the car they saw parked there at the washerette in Wrens?

A. Yes, sir, it was the same car they described to us.

By Mr. Thompson: I now offer these pictures, twenty-two through twenty-five, in evidence, Your Honor.

Note: Ictures (sic) admitted with no objection.

Q. All right, what is this, Agent Cook?

A. This envelope contains the money and the envelopes that we removed from the register in William Neal Moore's residence.

Q. Who sealed that envelope?

A. Myself and Sheriff Compton.

Q. And how much money is in that envelope?

A. Fifty-seven hundred dollars.

Q. In cash money?

A. Yes, sir, in twenty dollar bills.

Q. Currency of the United States of America?

A. Yes, sir.

Q. And what is the value of that money?

(p.27) A. Fifty-seven hundred dollars.

Q. And the envelope is signed by you and Sheriff Compton and it shows fifty-seven hundred dollars?

A. Yes, sir.

Q. All right.

Note: Envelope exhibited to the Court and counsel for the Defendant.

Q. All right, now, the allegation in the indictment says fifty-seven hundred dollars in cash money and a single barrel shotgun, the fuit (sic) of the armed robbery, and a total value of fifty-seven hundred and thirty dollars, including the money and the single barrel shotgun, would that be an accurate statement?

A. Yes, sir, it would.

Q. Now, by what means were the fifty-seven hundred dollars and the single barrel shotgun taken from Fredger Stapleton?

A. It was taken through the use of a gun in an armed robbery.

Q. And that gun being . . .

A. The pistol that was found at Moore's residence.

By Mr. Thompson: Now, if Your Honor please, we have referred on several occasions to a report that was made by the Probation Officer, Mr. Clark Rachels, which included a Crime Lab report, I would like to submit the entire record as State's Exhibit Number twenty-seven that you now hold in your hand. Counsel for the Defendant has received a copy of the report so that it will be included in the record, which includes reports and letters that have been submitted by Counsel for the Defendant.

By Mr. Pierce: That is agreeable, Your Honor, and at the same (p.28) time, we would like for a copy of the warrants to go in also.

Note: Probations Officer's report admitted as State's Exhibit number twenty-seven.

Q. All right, now, did you find any tennis shoes at the residence of Moore?

A. Yes, sir, we found a pair of tennis shoes there also.

Q. And did you also send them to the Crime Lab?

A. Yes, sir, we did.

Q. And the report on them is also included in the Crime Lab report?

A. Yes, sir, it is.

Q. And that report is included in State's exhibit twenty-seven?

A. Yes, sir.

Q. All right, now when you left Augusta going back to Wrens, who had Moore in the car?

A. He was with Agent Hamilton and myself.

Q. All right, did you and Agent Hamilton have a conversation with him regarding this matter on the way back?

A. No, sir.

Q. You did not discuss this matter with him at all?

A. Not on the way back to Wrens, just general conversation with him then.

Q. All right, when you returned to Wrens, where did you go?

A. We went to City Hall.

Q. All right, sir, did you have a conversation with (p.29) the Defendant at that time?

A. Yes, sir, we did.

Q. And where was that?

A. We were in the lobby of the City Hall.

Q. And who was present?

A. Agent Hamilton and myself.

Q. On what date was this?

A. This was April the fourth, approximately two A.M.

Q. What statements did Moore make to you at that time?

A. He advised me that he left the White residence and went to the laundromat where he parked his car, and he went to Stapleton's house and went up on the porch and went in through the front, bedroom window, he went across the hallway into the living room and when he got into the living room, he told me that Stapleton came out of his bedroom with a shotgun, and he grabbed for the shotgun, and when he knocked the shotgun to the left, a shot fired from the shotgun and at that time, he pulled his gun out and fired, and then he said he got the money out of his pants pocket, he said the pants were under the pillow in his bed, and he went back into the living room and got the shotgun and left and went down the street to the laundromat where he had parked his car.

Q. Did he tell you what his intent wa s (sic) for going to the Stapleton home?

A. To rob him and get his money.

Q. Did he tell you how he knew it, how he knew Stapleton had a large amount of money?

(p.30) A. Agent Ingram was talking to him there and he said that Curtis told him that his uncle carried a large sum of money on him all the time, and he had been down to visit with Curtis and found out where Stapleton lived.

Q. Now, how had Moore learned that Fredger Stapleton had a large sum of money?

A. Curtis told him.

Q. And what relation is George Curtis to Stapleton?

A. Curtis is Stapleton's nephew.

Q. And what was the relation between Curtis and Moore?

A. Curtis and Moore had been in the hospital previously together, and apparently they became acquainted there in the hospital.

Q. All right, after Moore had made these statements to you, what did you do with Moore then?

A. We turned him over to Sheriff Compton.

Q. And he was brought to Louisville?

A. Yes, sir.

Q. And what did you do then?

A. I went home.

Q. All right, did you talk to Moore later about this.

A. No, sir.

Q. All right, then that concluded your investigation of the matter?

A. Yes, sir.

Q. And the statements that Moore made to you are in your report in State's exhibit number twenty-seven?

A. Yes, sir.

(p.31) Q. All right, the vehicle that is shown in State's exhibits twenty-two to twenty-five, as described to you as having been seen in Wrens on the night of April third, and that you saw at the residence of William Neal Moore in Augusta, did you discuss that vehicle with Moore as to who owned it?

A. Yes, sir, I did.

Q. And is that the vehicle that he told you that he went to the Stapleton home in?

A. Yes, sir.

By Mr. Thompson: Your witness, counsel.

CROSS EXAMINATION

BY MR. PIERCE:

Q. Mr.Cook, when you arrived at the scene, the body was still there, is that correct?

A. Yes, sir.

Q. Did you have occasion to see the body?

A. Yes, sir.

Q. Have you had occasion to see the autopsy report?

A. Yes, I have.

Q. Did you see anything in that autopsy report that said anything about any other type of wounds other than the bullet wounds?

A. No, sir.

Q. You indicated that the shotgun was discharged, it that correct?

A. Yes, sir.

(p.32) Q. Do you know anything else about that, other than what he told you?

A. The shotgun blast appeared to come from the bedroom into the living and hit a table in the middle of the living room, appeared to come from the bedroom in the direction of the hall, and from the investigation, Moore and Stapleton were in the middle of the living room, Stapleton was coming from the bedroom into the living room and the blast was into the living room.

Q. So the blast was away from the deceased?

A. Yes, sir.

Q. Towards the room?

A. Yes, sir.

Q. All right, sir, what do you know about George Curtis? Do you know him, didn't you say you talked to him?

A. AGent (sic) Ingram talked to Curtis.

Q. But you have seen him?

A. Yes, sir.

Q. Do you know about how old he is?

A. He appeared to be in his early twenties.

Q. All right, sir and you mentioned in your report no injury other than the bullet wounds, is that correct?

A. Yes, sir.

By Mr. Pierce: Thank you.

By Mr. Thompson: Does the Court have any questions?

By The Court: No, sir, I have none.

By Mr. Thompson: All right, you may come down.

By The Court: Call your next witness.

(p.33) By Mr. Thompson: Sheriff Compton.

WHEREUPON, SHERIFF ZOLLIE COMPTON, called as a witness in behalf of the State, being duly sworn, testified:

DIRECT EXAMINATION

Q. You are Zollie Compton, Sheriff of Jefferson County, Georgia?

A. Yes, sir.

Q. And Sheriff, you were acting in that capacity on or about April the third of this year?

A. Yes, sir.

Q. How did you receive word that Fredger Stapleton had been killed?

A. The police from Wrens called and advised me that he had been killed.

Q. And as a result of that, what did you do?

A. I proceeded to Wrens and Agent Herndon was called.

Q. And did Agent Herndon respond?

A. Yes, sir.

Q. And you heard the testimony of Agent Cook that he conducted the investigation, the primary responsibility was his, Senior Agent Herndon, Agent Monahan, Agent Ingram, Agent Hamilton also assisted in the investigation, is that correct?

A. Yes, sir, I was present and witnessed everything (p.34) except the last part where the Defendant confessed there in Wrens.

Q. All right, now as related to the testimony of Agent Cook, wherein you were present, do you confirm that which Agent Cook has testified about?

A. Yes, sir.

Q. All right, can you add anything to his testimony?

A. No, sir.

By Mr. Thompson: Your witness, counselor.

CROSS EXAMINATION

BY MR. PIERCE:

Q. Sheriff, do you know George Curtis?

A. Yes, I know him when I see him, I don't know anything about him.

Q. Do you kn ow (sic) where he is now?

A. No, sir, I don't

Q. Do you have any idea about how old a man he is?

A. He looked to be around in his twenties, twenty-five, somewhere around in there.

Q. Would you say that he's older than Moore?

A. I would think he's a little older.

By Mr. Pierce: No further questions.

By The Court: Anything further?

By Mr. Thompson: No, sir.

By The Court: Thank you, you can come down, call your next witness.

(p.35) WHEREUPON, G. B. I. AGENT R. F. INGRAM, called as a witness in behalf of the State, being duly sworn, testified:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q. You are G. B. I. Agent R. F. Ingram?

A. Yes, sir.

Q. You assisted in the investigation into the death of Fredger Stapleton?

A. Yes, sir.

Q. In your own words, briefly, will you tell the Court what you did and your findings?

A. Yes, sir. As Agent Cook testified, Agent Monahan and myself arrived in Wrens, Georgia approximately five P.M. on April the third to assist Jefferson County and other GBI agents in the investigation into the death of Fredger Stapleton. Agent Monahan and myself began to canvass the neighborhood in an attempt to gain additional information into the circumstances surrounding the death. I went along the Old Stapleton Road interviewing people, and I interviewed Gordon Jenkins, who was an elderly black man, who discovered the body and he advised me that he had no knowledge other than the fact that he was to deliver a check to Stapleton that afternoon and that was why he came to be at the residence and discovered the body. And during my canvass of the neighborhood, I was at the junction of the old highway number seventeen and the Old Stapleton Road, I met a subject by the name of Willie James Wiley, a black male, (p.36) age twenty-nine, he approached me and said he had a little information, but didn't know if it would be of any value to the investigation, but he said he lived on the Old Stapleton Road and was coming home this night at approximately eleven thirty P. M. and while walking down the Old Stapleton Road, he noticed a person he described as a young, black male, which he further described as being between the ages of eighteen and twenty-five, medium heighth (sic), and medium build, and he stated that the subject was wearing brown pants, a light colored shirt, short sleeved without a collar, and wearing

tennis shoes, and he further stated that when he first noticed this man, he appeared to be carrying a walking cane, but when he got closer to him, he noticed that it was a single barrel shotgun, being carried in the position of a cane. He further stated that the black man had what appeared to be short to medium length hair and was a brown skin color. He further described the subject as being not a dark black, but rather a brown skinned type, what he described as a pecan color.

With this description, we than questioned him if he had observed any vehicles in the area, and he stated that at the laundromat at the junction of Georgia seventeen and the Old Stapleton Road, he noticed two vehicles at the parking lot at the laundromat, but noticed there was only one woman in the laundry and he thought it was rather unusual for two vehicles to be parked there and only one person, which he described as a young colored woman. One of the vehicles he descriged (sic) as a small, compact late model car which he thought was red in color. (p.37) This was the only description of the vehicle he could give us. He said he then proceeded up the Old Stapleton Road into the direction away from Georgia Highway seventeen, toward his residence, and he observed four, young black males riding bicycles, two people on each bicycle, one driving and one on the handle bars. He said that he didn't know what their names were, but he would get us their names and we could talk with them, and he gave us their names of Larry Wood, Sammy Douglas, Luman Terrell and Robert Mills. That's about all the information he could give us, but he did accompany us in our vehicle to help us locate these four boys. We

interviewed all four boys, and with the description of the vehicle which came from the four boys that was parked at the laundromat, which was described as a nineteen seventy-three, brown in color, Chevy Nova, with a black stripe down the side. They first stated that they saw one, black male entering the car with short hair, but could not give any further description of the man, and said the vehicle left in the direction of the Old Stapleton Road, entering Georgia seventeen, heading towards Wrens. NOw (sic), Wiley mentioned that he did not in any way see this man leaving the Stapleton residence, and Wiley said that when he was coming up the Old Stapleton Road, he observed the subject which I described, wearing the clothes that he described, coming off the front lawn of the Stapleton Residence and turning sharply, and after he got closer to him, he got a better view of him and he was able to give us a good description of him.

With this information, we continued the investigation, and a subject by the name of George Curtis was brought to the (p.38) Wrens police station. He was a black male and resided in Wrens, Georgia. Curtis stated that he on the previous night was at his girl friend's house, Doris White, with several other people, on a what he described as a get-together or having a little party, and they were drinking alcoholic beverages, beer, wine and liquor. Subject further stated in the interview that his uncle was the one who was killed and he did not know anything about it at all. He was then asked the names of the people there at the residence and to describe what kind of clothing they were wearing and what kind of vehicles they were driving. In

this interview, he described a nineteen seventy-three, orange Chevy Nova, with black racing stripes. He stated that the subject that was driving it that night was named William Neal Moore, who was a soldier at Fort Gordon. He further stated that Moore was about five, ten or eleven, of medium build, he had on a light colored shirt with no collar, brown pants and ten nis (sic) shoes that night. He met the description of the same subject seen by Wiley leaving the Stapleton residence that night. We further questioned Curtis and he stated that he and Moore were in the hospital together and had been fairly close and had numerous conversations, one of which was about the deceased, Fredger Stapleton. He said that Stapleton was his uncle, that he lived alone, and Moore asked him about the man, and through conversation, it was determined that Stapleton had large amounts of money on his possession, that he lived alone and that he lived in Wrens, Georgia. We continued the interview to determine if Curtis had any knowledge of the actual crime itself. We further (p.39) asked Curtis what time Moore left the residence that night, and he said it was approximately eight-thirty or nine o'clock. I then asked him if the vehicle that he was in was still in Wrens at eleven-thirty that night, if the subject had any business there, and he said, no, to his knowledge, the only one Moore knew was me, George Curtis, and he said that if the vehicle was there, that Moore must have been the one that was responsible for his uncle's death and that he would take us to Moore's residence in Augusta, Georgia to the trailer park, which he did do that morning, he did accompany us to the trailer park, at which time Sheriff

Compton and myself presented him with the warrant, identified ourselves, and we advised him who we were, and we advised him of the charges against him, and read the warrant to him and presented the warrant to him and gave him a chance to read it, and I advised him of his constitutional rights, subject stated to me that he was fully aware of his rights and understood them completely, and he further stated that he was a military policeman in the Army and he had advised people of their rights himself, he knew what the constitutional rights were. I further asked him if we could search the premises, he gave us his consent to search the premises. Sheriff Compton asked him where the money was and where the gun was, and he, Moore, told us exactly where they were. After that, Moore signed both a waiver to constitutional rights and a waiver to search his premises, and this concluded my part of the investigation.

By The Court: Do you have that waiver?

(p.40) A. The written waiver should be a part of the case report.

Q. Now, I hand you this waiver of counsel and ask you if William Neal Moore executed this on April the fourth, nineteen seventy-four, at twelve thirty A. M., and if you witnessed his signature?

A. Yes, sir, I witnessed that and Sheriff Zollie Compton also signed it.

Q. All right, I hand you the waiver of constitutional rights to a search warrant and ask you if William Neal Moore executed that?

A. Yes, sir, he did, approximately at the same time, witnessed by me and Sheriff Zollie Compton.the waiver form included the trailer as well as the automobile which is described as a nineteen seventy-three Chevy Nova with the tag number included.

By The Court: Assign that a number.

By Mr. Thompson: Yes, sir, the waiver of counsel is twenty-eight, and the waiver to a search warrant is twenty-nine. I tender these in evidence.

By Mr. Pierce: It's all right.

By The Court: All right, let them be admitted without objection.

By Mr. Thompson: Your witness, counselor.

(p.41) CROSS EXAMINATION

BY MR. PIERCE:

Q. Mr. Ingram. . . .

A. Yes, sir.

Q. When was it you said you interviewed George Curtis?

A. George Curtis was interviewed at nine-thirty A. M. on april the third, nineteen seventy-four, at the City Hall in Wrens, Georgia.

Q. And did I understand you to say that Curtis told you that he had been with William Moore the night this occurred earlier in the evening?

A. Yes, sir, on the previous night of his interview, which would have been April the second.

Q. I believe your testimony was that George Curtis stated that they had been drinking different beverages, is that correct?

A. Yes, sir, that's correct.

Q. What did you say they had been drinking?

A. I believe my testimony was that they were drinking alcoholic beverages.

Q. You don't know what?

A. Curtis described it as being beer, wine and some liquor.

Q. And when did he say he last saw Moore prior to the alleged crime?

A. He said that he last saw Moore approximately eight (p.42) thirty or nine P. M. on April the second.

Q. And they had been drinking?

A. Yes, sir.

By Mr. Pierce: Thank you.

By The Court: Anything further from Mr. Ingram?

By Mr. Thompson: No sir, you may come down.

If Your Honor please, this concludes the State's presentation of this phase of the proceeding, subject to the right of rebuttal.

By The Court: All right, sir, Mr. Pierce, do you have anything?

By Mr. Pierce: Your Honor, we don't have any witnesses other than the Defendant and members of his

family. You can just swear them and let them take the stand and let them tell you whatever they want to say, any way the Court wishes.

By The Court: All right, sir, call your first witness.

WHEREUPON, JAMES MOORE, called to the stand as a witness in behalf of the Defendant, being duly sworn, testified:

DIRECT EXAMINATION

BY MR. PIERCE:

Q. James, you are the brother of William Neal Moore, the Defendant, and this is your chance to tell the Judge anything you desire to tell him about your brother in mitigation in this case, you just tell the Judge whatever you want to tell him about it.

A. Well, sir, I know this is a terrible thing that happened. He was in the service and in the hospital with this (p.43) other guy, and I think it has some bearing . . . .

By Mr. Thompson: If Your Honor please, I can't hear him.

By The Court: Speak into that microphone if you will, please.

A. Well, as I was saying, I can't conceive of him doing something like this by himself. The moment I learned of this, I was shocked. He went in the service and was doing pretty good. There is not much I can say about it. He has never been in any kind of trouble,

other than just small scrapes as a child. That's all I can say.

By The Court: Just in a scrape as a child, but never anything violent?

A. That is correct, Yes, sir.

By The Court: You are an older brother, right?

A. Yes, sir.

By The Court: How many brothers and sisters does he have?

A. Well, there's five of us.

By The Court: Five? How many sisters and how many brothers?

A. Two sisters and two brothers.

By The Court: Is he the youngest?

A. He's the baby.

By The Court: The report shows that your father is stricken with arthritis and your mother has multiple sclerosis?

A. Yes, sir, she has multiple sclerosis.

By The Court: She apparently has suffered with that over a period of years?

A. Yes, sir, that's correct.

By The Court: Your father, the report shows, has been in the mental institution?

(p.44) A. Yes, sir.

By The Court: And I believe it said for the criminally insane, is that accurate or not?

A. Well, I understand that's right, but you know, it was probably just put on paper.

By The Court: It was just put on paper?

A. Yes, sir.

By The Court: Where is he now?

A. He's at home.

By The Court: He is at home with your mother?

A. Yes, sir.

By The Court: Yes, sir.

By The Court: And I believe the report shows that she is a beautician?

A. Well, she was, you know. My father wanted to come, but he couldn't.

By The Court: How old is your father?

A. Fifty-six, and of course, my mother couldn't come.

By The Court: She's in very bad health, is that right?

A. Yes, sir.

By The Court: All right, do you have anything else you want to say?

A. No, sir.

By The Court: All right, you can come down. Call your next witness, Mr. Pierce.

(p.45) WHEREUPON, TERRY MOORE, called to the stand as a witness in behalf of the Defendant, being duly sworn testified:

A. I'm Terry Moore, and I'm the second one. We were very distressed when we learned of this. We had it tough when we were young, and he got in the service; we didn't have no father when we grew up. We got a job after school and always tried to help out. I always tried to keep myself straight, and this is very, very serious, a crime like this. If there was any way we could turn this back, I wish we could turn it back. I know, I recognize that you want to see justice served, and every person makes a mistake in life. To take his life is not going to bring back another life.

By The Court: In other words, what you're saying is that to take his life is not going to bring back Fredger Stapleton?

A. Yes, sir, that is correct.

By The Court: How much older are you than your brother?

A. I'm two years older.

By The Court: You are the closest to him in age than any of the other brothers and sisters?

A. Right.

By The Court: Any other questions, Mr. Pierce?

By Mr. Pierce: No, sir.

By The Court: Mr. Thompson, do you have any questions?

By Mr. Thompson: No, sir.

By The Court: Thank you, sir.

(p.46) HEREUPON, MRS. REGINA WALKER, called as a witness in behalf of the Defendant, being duly sworn, testified:

A. My name is Regina Walker, and I'm next to the oldest sister of Billy. My sister and I, we helped raise him, and he was always a pretty good boy, he hasn't been in any kind of trouble or anything, and he was in the service and had an operation on his knee, which was real serious, and then he had a lot of domestic problems with his wife, we had been keeping the baby. At the time this happened, he had only been back about three weeks, he had to come home to get the car and the baby. I'm not saying he's justified, but he had a lot of problems, and at the time this happened, he had been drinking, and I don't really think he would have done anything like this, because, you know, he wasn't raised like that, I just don't understand.

By The Court: You stated you were the oldest?

A. I'm next to the oldest.

By The Court: Any questions?

By Mr. Pierce: No, sir.

By The Court: Mr. Thompson?

By Mr. Thompson: No, sir.

By The Court: Thank you, mama (sic).

WHEREUPON, MRS. NORMA JEAN WHIPPLE, called to the stand as a witness in behalf of the Defendant, being duly sworn, testified:

A. I'm Norma Jean Whipple, I'm the oldest of five children. I helped rear him when he was a child, sent him to (p.47) school, he was a good student in school, he made good grades, received recommendations for achievement in school and certificates. Right before he left school to go to the service, he was working at Jeffery's Manufacturing Company, and he got in the service, he went to school and got recommendations in the service, and he got married while he was in the service, and he was recommended for a specialist school. He finished his time in Germany and he went to Fort Gordon, and because he was recommended to attend this special school, he was going there in June. My mother told me to tell you he's a good boy, and it's just hard for her to understand what happened, or what made him do something like this, because he's not basically unstable.

By The Court: Any questions, Mr. Thompson?

By Mr. Thompson: No, sir.

By The Court: Is there anything else you would like to say?

A. I probably will think of a million things when I sit down. Thank you very much.

By The Court: Thank you.

By Mr. Pierce: Your Honor, I would like to call the Defendant to the stand.

By The Court: do you want him sworn or not?

By Mr. Pierce: Swear him, Your Honor.

WHEREUPON, THE DEFENDANT, WILLIAM NEAL MOORE, taking the stand in his own behalf, being duly sworn, testified:

By The Court: Of course, you understand you are not required to make a statement, you may remain silent.

(p.48) A. Yes, sir.

By Mr. Pierce: Billy, I want you to try as best you can to tell the Judge how you got mixed up and how you came about doing this thing and how you feel about it.

A. I'm sorry I killed, it was stupid. I didn't mean to kill him. I was in the hospital and met George Curtis when I was in the hospital, and he was there too, and I talked to him, and he told me about his uncle.

By The Court: Just a minute, let me turn this thing off so we can hear you.

A. He told me about his uncle, had this money, and he told me where his uncle lived at, and he showed me where his uncle lived at. We planned this, he wanted to burn his uncle up, he would get the money and burn him up in the house, and we went over there and Curtis got scared after he went into the house, that was the first time, we was drinking, we had been drunk, we went over to this girl's house. I don't know

her name, he took me over there, and we went over to the house, we went to the back door, and we got in between one of the bedrooms and the front room, there was a locked door, we left and went back over to Curtis' house. Curtis, he left and I went back over there. I didn't have no intention of killing him. When I went in there, he come out there with a shotgun and hit me in the leg, it scared me, made me shoot him, and I'm sorry for what I did, and ask for mercy of the Court.

By Mr. Pierce: You Honor, I have no further questions.

By The Court: All right, Mr Thompson?

(p.49) CROSS EXAMINATION

By Mr. Thompson:

Q. You have seen the envelope here that the officers said contained fifty-seven hundred dollars, and they state that this is the money that you gave them that came out of the vent, and that you said it's the fruit of this robbery that you got this fifty-seven hundred dollars from Fredger Stapleton, is that correct?

A. That's correct.

Q. And is this fifty-seven hundred dollars the property of Fredger Stapleton?

A. It is.

Q. And do you claim any title, interest or any right in any of this money?

A. No, sir.

Q. And this is the money and it now belongs to the estate of Fredger Stapleton, is that correct?

A. That's correct.

By Mr. Thompson: No further questions, Your Honor.

By The Court: All right, sir.

By Mr. Pierce: You can come down.

By The Court: Thank you. Do you have anything further, Mr. Pierce?

By Mr. Pierce: No, sir, nothing further, Your Honor.

By Mr. Thompson: I don't have anything in rebuttal, Your Honor.

By The Court: All right, we will recess for lunch and return at two o'clock and will hear the arguments of counsel.

(p.50) WHEREUPON, COUNSEL for the State, Hon. H. R. Thompson, presents his case to the Court, with Counsel for the Defendant making the closing argument.

AND AFTER HEARING ARGUMENTS, the Court recessed until three-thirty P.M. at which time the Court rendered its opinion.

By The Court: All right, is there anything you have to say, William Neal Moore, before sentence is imposed?

By The Defendant: No, sir.

By The Court: All right, now everyone remain silent, I don't want any outbursts.

The State of Georgia versus William Neal Moore, in the Superior Court of Jefferson County, Georgia, Indictment Number three, May Term nineteen seventy-four, charges: murder and armed robbery, Findings of the Court: based on the Defendant's plea of guilty and the evidence presented to this Court, the Defendant having waived a Jury trial on the question of punishment for the capital offenses charged, I find the Defendant guilty of the offense of armed robbery as charged against him in Count two of the indictment. On the question of punishment, prior to the imposition of the death penalty, one statutory aggravating circumstance is found by the Court to exist, to wit: the murder of Fredger Stapleton was committed while the accused, William Neal Moore, was engaged in the commission of another capital felony, that is, armed robbery of the said Fredger Stapleton. Also, I find that the armed robbery of Fredger Stapleton was committed while the accused, William Neal Moore, was engaged in the commission of another capital (p.51) felony, that is murder of the said Fredger Stapleton.

CODE SECTION twenty-six dash nineteen aught two defines armed robbery as follows: A person commits armed robbery when, with intent to commit theft, he takes property of another from the person or the immediate presence of another by use of an offensive weapon. Therefore, I find that William Neal Moore did on the second day of April nineteen seventy-four, with intent to commit theft, take fifty-seven hundred dollars

in cash money and a shotgun from the immediate presence of Fredger Stapleton by use of an offensive weapon, to wit, a thirty-eight special revolver, the said money and shotgun being the property of Fredger Stapleton.

CODE SECTION twenty-six dash eleven aught one defines murder as follows: A person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Therefor, I find that William Neal Moore did, on the second day of April nineteen seventy-four, unlawfully and with malice aforethought, kill on Fredger Stapleton, a human being, by shooting the said Fredger Stapleton with a thirty-eight special revolver.

I FURTHER find that Georgia law defines armed robbery and murder as capital felonies.

Comments By The Court: The death penalty statute of Georgia, Code section twenty-seven, twenty-five thirty-four point one, requiring proof of aggravating circumstances to justify the imposition of the death penalty was enacted by (p.52) the General Assembly of Georgia, signed into law by the Governor of Georgia, and held to be constitutional by the Supreme Court of Georgia in Coley versus the State, two thirty-one Georgia, eight twenty-nine. It is therefore the function of this Court to apply this statute to the facts of this case in determining the punishment to be imposed. This I have done. Since discretionary sentencing is sanctioned by Georgia Law, the application of quote evenhanded justice, and quote, mentioned in Coley supra, and the Supreme Court of the United States decisions Furman

versus Georgia and Jackson versus Georgia, ninety-two Supreme Court, twenty-seven twenty-six, is a matter that addressed itself to the Supreme Court of Georgia.

I AM AWARE of the conflict of opinions by various other state jurisdictions, and the conflict of opinion of the Justices of the Supreme Court of the United States over the question of mandatory and discretionary sentencing in capital cases. However, I reiterate that I am bound by the decision of the Supreme Court of Georgia.

THESE FINDINGS made in Open Court at the Jefferson County, Georgia courthouse in Louisville, Georgia this the seventeenth day of July nineteen seventy-four, Walter C. McMillan, Jr., Judge, Superior Courts of the Middle Judicial Circuit and filed in office this July seventeenth, nineteen seventy-four, E.J. Smith, Clerk.

(p.53) NOW, IN STATE OF GEORGIA VERSUS WILLIAM NEAL MOORE, in the Superior Court of Jefferson County, Georgia Indictment number three, May Term nineteen seventy-four, charges, count one, murder, count two, armed robbery, ORDER OF THE COURT; The Defendant having plead guilty to this Court, and the following aggravating circumstances having been determined by the Court, to wit, the murder of Fredger Stapleton was committed while the accused, William Neal Moore, was engaged in the commission of another capital felony, that is, armed robbery of the said Fredger Stapleton, Therefore, it is considered, ordered and adjudged by the Court that the Defendant, William Neal Moore, be taken from the Bar of this Court to the common jail of Jefferson County or

to some other safe and secure place under such guard and protection as may be deemed necessary, where he shall be safely and securely kept until his removal therefrom to the custody of the Director of the State Department of Corrections, for the purpose of the execution of this sentence in the manner prescribed by law.

IT IS FURTHER ordered and adjudged by the Court that on the thirteenth day of September nineteen seventy-four, the defendant, William Neal Moore, shall be executed by the Director of the State Department of Corrections at such penal institution as may be designated by said Director, and witnessed only by the executing officer, Defendant's relatives, (p.54) counsel and such clergyment (sic) and friends as he may desire.

IT IS FURTHER ordered that the Sheriff of Jefferson County, Georgia together with such deputies as he may deem necessary, the number of guards to be approved by the presiding Judge or the Ordinary of said County, shall convey and deliver the said William Neal Moore to the Director of the State Department of Corrections at such penal institution as may be designated by said Director not more than twenty days and not less than two days prior to the time fixed herein for the execution of said condemned person, and there delivered into the custody of said Director.

And It Is Further Ordered that the said Defendant, William Neal Moore on the day fixed herein between the hours of ten o'clock AM and two o'clock PM be by the Director of the Said Department of Corrections electrocuted at the time and place and in the manner

herein provided by Law. And may God have mercy upon his soul.

Signed This Seventeenth day of July nineteen seventy-four, Walter C. McMillan, Jr., Judge, Superior Court, Jefferson County, Georgia, and filed in office this seventeenth day of July nineteen seventy-four, E.J. Smith, Clerk.

I Have This comment to make, Mr. Moore. You, in my opinion, did everything that a man could do after you were caught and do an honorable thing insofar as your true statements made, your cooperation with the officials, pleading guilty to the mercy of the court, and placing an awsome (p.55) responsibility on me. I could, if words were at my command, try to express to you the way that I have felt about this thing all along. I had not welcomed the decision that I had to make. I feel like that capital punishment is not an unjust punishment in many instances, and I don't feel like it's unjust in this one. I have many, many reservations about whether there will be an execution by Government authorities in this county ever again. As I stated in here, you might not have understood it, but the Supreme Court of Maryland has said that this decision of Furman versus Georgia and Jackson versus Georgia applies a different standard, that is, that the law be mandatory. If a person commits murder and armed robbery, the law must say that he must die. It must not be any discretion left on the part of the judge or jury. That seems to be the conflict. Georgia has said that discretionary sentencing is appropriate.

THE LAW PROVIDES, however, that in all death cases, the case is automatically appealed to the Supreme Court of Georgia, and of course, this case will be. And the record will be typed up by the court reporter and filed in office with the Clerk and sent to the Supreme Court of Georgia. Then they will take cases that have taken place in Georgia over a period of years and they will apply the facts to this case to the facts of other cases that have happened in Georgia, and then they will apply (p.56) "evenhanded justice" to your case with other similar cases that have happened in Georgia. Now, I can't make that determination. The law does not place that discretion in me. It places that discretion solely within the jurisdiction of the Supreme Court of Georgia. As to whether or not that actually applies in your case is for them to decide. So, of course it will be necessary for you to stay under the custody and jurisdiction of the Sheriff until this appeal is pursued in the Supreme Court of Georgia. If they affirm it, very likely to the Supreme Court of the United States.

SO, I FOUND aggravating circumstances. I also found, but I didn't need to find, for purposes of this finding, mitigating circumstances insofar as the aggravating circumstances were concerned. Mitigating means good circumstances, those being your willingness and your forthrightness in meeting what must be to you a terrible, terrible experience. So that does go to your credit, but for the purposes of this Court, for this finding, I could not in good conscience apply in your case sufficient to wipe out the aggravating statutory circumstances. We've got this. If we're going to philosophy about it, and if I'm permitted to do that, I'll do it.

People in their homes - the most precious place a man can have - is his home; and to be in a home, and probably this man was asleep, I don't know, or for any person to be, not this man, but any (p.57) person, to be asleep in his home to be invaded by an intruder, that's armed with weapons, that's prepared necessarily to kill (or otherwise the weapon wouldn't be there in the hands of the intruder), is probably an invasion of the highest injustice that another can do. Now, I can only imagine that anyone that is invaded by an intruder with an armed weapon, the fear that they must go through when they are encountered in such a situation. So, I feel like that if the Court ever does require mandatory punishment - that is when they specify by law what offenses will have to be suffered by the electric chair - that one of these statutory offenses probably will be that when a person is robbed and killed in his home, that mandatory, as contrasted to discretionary, statutory aggravated circumstances will probably warrant the electric chair without life imprisonment. That justifies me in making the finding that I made.

NOW, YOU WILL BE CARRIED to the penitentiary. It's a violation of the law to escape or attempt to escape from the penitentiary. The law further is that you can receive five additional years for the offense of escape, and the guards have orders to shoot and shoot to kill if necessary to prevent an escape, and they would be justified in killing you if you did attempt to run. In addition to that, you could get five additional years in the penitentiary. You say, well, what difference (p.58) does it make, I've been sent to the electric chair. You do have the hope that the Supreme Court will

reduce this to life imprisonment, and there is the hope that the Supreme Court of the United States will void all electrocution cases, but it is not for me to say.

THAT'S THE JUDGMENT of the Court, and good luck to you. So that concludes the case.

THERE BEING NOTHING FURTHER, THE CASE OF THE STATE OF GEORGIA VERSUS WILLIAM NEAL MOORE WAS CONCLUDED.

Illegible
of the
Superior Court of JEFFERSON County, Georgia

The State vs. William Neal Moore
(A case in which the death penalty was imposed)

A. Data Concerning the Defendant

1. Name Moore William Neal
   Last, First Middle

2. Date of Birth 5 - 14 - 51
   Mo. Day Year

3. Social Security Number 275-24-2426

4. Sex: M [X]
   F [ ]

5. Marital Status: Never married [ ]
   Married [X]
   Divorced [ ]
   Spouse Deceased [ ]

Children
(a) Number of children One
(b) Ages of children:
1 2 *3** 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
(Circle age of each child)

Father living: Yes [X] No [ ]

If deceased, give date of death _____
Mother living: Yes [X] No [ ]
If deceased, give date of death _____

Number of children born to parents five

Education–Highest Grade Completed:
1 2 3 4 5 6 7 8 9 10 11 *12** 13 14 15 16
(Circle one) [college]

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*Italics circled in copy.

Intelligence Level: (IQ below 70) Low [ ]
(IQ 70 to 100) Medium [ ]
(IQ above 100) High [ ]
UNKNOWN

Psychiatric Evaluation Performed? Yes [ ] No [X]
If performed is defendant:
a. Able to distinguish right from wrong? [ ] [ ]
b. Able to adhere to the right? [ ] [ ]
c. Able to cooperate intelligently in his own defense [ ] [ ]
If examined, were character or behavior disorders found? [ ] [ ]
(If answer is yes please elaborate)_____
N/A

What other pertinent psychiatric [and psychological] information was reve
N/A

Prior Work Record of Defendant:

Type Job	Pay	Dates Held	Reason for Termination
a. See Probation Officer's Report, Page 4			
b.			
c.			
d.			
e.			

*A separate report must be submitted for each defendant sentenced to death.

Illegible

How did the defendant plead? Guilty [X] Not guilty [ ]

C. Offense related data

1. Capital Offense for Which Penalty Imposed:
   a. Treason .....[ ]
   b. Murder .....[X]
   c. Kidnapping for Ransom.....[ ]
   d. Kidnapping where Injury Results .....[ ]
   e. Aircraft Hijacking .....[ ]
   f. Rape.....[ ]
   g. Armed Robbery .....[X]

2. Were other offenses tried in the same trial?
   yes [ ] no [X]

   If other offenses were tried in the same trial list those offenses.

   a. N/A
   b. _____
   c. _____
   d. _____

3. If tried with jury, did the jury recommend the death sentence? Yes [ ] No [ ]

4. Statutory aggravating circumstances found:
   Yes [X] No [ ]

5. Which of the following statutory aggravating circumstances were instructed and which were found?

	Instructed	Found
a. (1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or	[ ]	[ ]

	(2) The offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.	[ ]	[ ]
b.	(1) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony, or aggravated battery or	[ ]	[X]
	(2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.	[ ]	[ ]
c.	The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	[ ]	[ ]
d.	The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.	[ ]	[X]

e.	The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty.	[ ]	[ ]
f.	The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[ ]	[ ]
g.	The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.	[ ]	[ ]
h.	The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[ ]	[ ]
i.	The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement.	[ ]	[ ]

j. The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another. [ ] [ ]

List non statutory aggravating circumstances indicated by the evidence, if any.

a. The crime had been planned well in advance of the time committed; and,
b. on another occasion the defendant had entered the house of the decreased
c. and was not completed. The defendant returned again on the date that
d. the robbery and murder occurred. In other words, this crime had been
planned for sometime prior to its execution.

Was there evidence of mitigating circumstances?
Yes [X] No [ ]

If so, which of the following mitigating circumstances was in evidence?

a. The defendant has no significant history of prior criminal activity. [ ]
(None, except Juvenile record)

b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]

c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act. [ ]

d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct. [ ]

e. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor. [ ]

f. The defendant acted under duress or illegible of another person. [ ]

g. At the time of the murder, the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]

h. The youth of the defendant at the time of the crime. [X]

i. Other [X]
please explain if (i) is checked His forthrightness in admitting the crime upon his apprehension.

If tried with a jury, was the jury instructed to consider the circumstances indicated in *8* as mitigating circumstances? Yes [ ] No [ ]

Does the defendant's physical or mental condition call for special consideration? Yes [ ] No [X]

Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes [X] No [ ]

Was the victim related by blood or marriage to defendant? Yes [ ] No [X]

If answer is yes, what was the relationship?_____

_____

_____

Was the victim an employer or employee of defendant?
No [X]
Employer [ ]
Employee [ ]

Was the victim acquainted with the defendant? No [X]
Casual Acquaintance [ ]
Friend [ ]

Was the victim local resident or transient in the community?
Resident [ ]
Transient [X]

Was the victim the same race as defendant?
Yes [X] No [ ]

Was the victim the same sex as defendant?
Yes [X] No [ ]

Was the victim held hostage during the crime? No [X]
Yes - Less than an hour [ ]
Yes - More than an hour [ ]

Was the victim's reputation in the community:
Good [X]
Bad [ ]
Unknown [ ]

Was the victim physically harmed or tortured?
Yes [X] No [ ]

If yes, state extent of harm or torture:_____
No torture except he was shot several times.
_____

Illegible weapon was used in commission of the crime was it?

No weapon used	[ ]
Poison	[ ]
Motor Vehicle	[ ]

Blunt Instrument	[ ]
Sharp Instrument	[ ]
Firearm	[X]
Other _____	

_____

4. Does the defendant have a record of prior convictions? Yes [X] No [ ]

5. If answer is yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date of Offense	Sentence Imposed
a. Tampering with Vending Machine	8-31-68	unknown
b. Curfew violation during riot	7-22-69	unknown
c. Juvenile violations - see Probation Officer's report, page 3		
d. _____		

6. Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [X]

7. Was the defendant a local resident or transient in the community?
Resident [ ]
Transient [X]

D. Representation of Defendant*

1. Date counsel secured Prior to arraignment on June 4, 1974.

2. How was counsel secured?
   a. Retained by defendant [X]
   b. Appointed by Court [ ]

3. If counsel was appointed by court was it because
   a. Defendant unable to afford counsel? [ ]
   b. Defendant refused to secure counsel? [ ]
   c. Other (explain)_____ [ ]
   _____
   _____

4. How many years has counsel practiced law?
   a. 0 to 5 [ ]
   Unknown to Court [ ]
   b. 5 to 10 [ ]
   c. over 10 [ ]

5. What is the nature of counsel's practice?
   a. Mostly civil [ ]
   b. General [ ]
   c. Mostly criminal [ ]

6. Did the same counsel serve throughout the trial? Yes [X] No [ ]

7. If not explain in detail._____

* (If more than one counsel served answer the above questions as to each counsel and attach to this report.)

E. General Considerations

1. Was race raised by the defense as an issue in the trial? Yes [ ] No [ ]

2. Did race otherwise appear as an issue in the trial? Yes [ ] No [ ]

3. What percentage of the population of your county is the same race as the defendant?
   a. Under 10% ..... [ ]
   b. 10 to 25% ..... [ ]
   c. 25 to 50% ..... [X]
   Approx.
   d. 50 to 75% ..... [ ]
   e. 75 to 90% ..... [ ]
   f. over 90% ..... [ ]

4. Were members of defendant's race represented on the jury? Yes [ ] No [ ] N/A

5. If not, was there any evidence they were systematically excluded from the jury? Yes [ ] No [ ] N/A

6. Was the jury instructed to exclude race as an issue? Yes [ ] No [ ] N/A

7. Was there extensive publicity in the community concerning this case? The crime was known generally in the community.(?) Yes [ ] No [ ]

8. Was the jury instructed to disregard such publicity? Yes [ ] No [ ] N/A

9. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [ ] N/A

10. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [ ] N/A

11. If answer is yes, what was that evidence?_____

12. General comments of the Trial Judge concerning the appropriateness of the sentence imposed in this case _____
I assume that this question was intended for cases in which the jury imposed the death penalty.

F. Chronology of Case

	Elapsed Days
1. Date of Offense April 2, 1974	
2. Date of Arrest April 4, 1974.	2 days
3. Date Trial Began July 17, 1974.	75 days
4. Date Sentence Imposed July 17, 1974.	75 days

Post trial motions ruled on N/A

*Date Trial Judge's Report Completed Aug. 28, 1974

*Date Received by Supreme Court_____

*Date Sentence Review Completed_____

*Total Elapsed Days_____

* To be completed by Supreme Court

This report was submitted to the defendant's counsel for such comments as he desired to make concerning the factual accuracy of the report, and

SEE ATTACHED LETTER

1. His comments are attached ( )
2. He stated he had no comments ( )
3. He has not responded ( )

Date
Aug. 28, 1974

/s/ Walter C. McMillan, Jr.
Judge, Superior Court of
Jefferson County

PRE-SENTENCE INVESTIGATION
JEFFERSON COUNTY

CASE STUDY

DEPARTMENT OF OFFENDER REHABILITATION
COMMUNITY-BASED SERVICES

Institution Number ___ Court Number ___

Name: WILLIAM NEAL MOORE
Alias: "BILLY"

Address: Crystal Springs Trailer Park, Augusta, Ga.

County	State	Race	Sex	Age
Richmond	Georgia	B	M	23

Ht.	Wt.	Birthdate
5'11"	153	5/14/51 (Columbus, Ohio)

Offense
Count 1: Murder; Count #2; Armed Robbery

Date Arrested	Time in jail	District Attorney	Bond
4/4/74		H.R. Thompson	

Arresting Officer
Jeff. Co. Sheriff's Dept. and D.O.I. Agents

Defense Attorney	Judge
Hinton R. Pierce	Walter C. McMillan, Jr.

Court	Report date
Superior	7/17/74

PRESENT OFFENSE:

Indictment #2313 states that on the second day of April in the year of our Lord nineteen hundred and seventy-four in the county aforesaid, did then and there unlawfully and with malice aforethought kill one Fredger Stapleton, a human being, by shooting the said Fredger Stapleton with a certain pistol, contrary to the

laws of the State of Georgia, the good order, peace and dignity thereof.

County #2: And the Grand Jurors aforesaid, on their oaths aforesaid, in the name and behalf of the citizens of Georgia further charge and accuse William Neal Moore with the offense of Armed Robbery for that the said William Neal Moore on the 2nd day of April, in the year of our Lord nineteen hundred and seventy-four in the county aforesaid, did then and there, unlawfully with intent to commit theft, took from the person of Fredger Stapleton, the following property, to wit-: $5,700.00 in cash money and one single barrel shotgun, of the property of Fredger Stapleton, of the total value of $5,730.00.

Counts #1 and #2 occuring simultaneously.

On June 24, 1974, William Neal Moore, represented by Attorney Hinton R. Pierce, advised said Mr. Pierce to enter him a plea of guilty before the presiding Judge, Honorable Walter C. McMillan, Jr., Superior Courts, Middle Judicial Circuit, to the offenses of murder and armed robbery. Sentence at this time was delayed by Judge McMillan who requested a pre-sentence investigation to be completed by the Probation and Parole Supervisor by July 17, 1974 at which time sentence would be imposed.

Personal contact was made with the Jefferson County Sheriff's Department, Sheriff Zollie Compton, who stated that the Sheriff's Department received a call that there had been a murder in Wrens, Georgia at the Fredger Stapleton residence. Benny Mills, neighbor of Mrs. Jenkins who is sister to the dead man, notified

the Sheriff's Department of the murder. The City Police of Wrens arrived first at the scene and then the Sheriff's Department arrived.

The Georgia Bureau of Investigation was then immediately notified and they came to the scene to investigate the murder. They took fingerprints, pictures of the dead man's body and started their investigation by contacting people in the neighborhood. Agents of the Thomson GBI of the DOI who aided in this investigation were Agent C. W. Herndon, Agent H. E. Cook, Agent M. B. Monahan, Agent Steve Hamilton and Agent R. F. Ingram. (Their statements can be found in the enclosed report, along with the Coroner's report (Dr. J. L. Veatch), Medical Examiner's (Dr. George Pilcher) report, and crime lab report (Dr. Larry Howard).)

Sheriff Compton stated that "Informer A" gave him a good lead as to who might have committed the crime. This subject's car was parked at a laundermat near the Stapleton home the night the offense occurred. "Informer B" stated that he saw someone walking up the street near Stapleton's house who fitted the description of William Neal Moore, said someone was carrying a shotgun in his hand. Mrs. Mattie Bell Jenkins, sister of the deceased man, took out a warrant for Moore for Murder and Armed Robbery, his address being 2513 Repace Drive, Crytal Springs Trailer Park, Augusta, Georgia. The Sheriff's Department and GBI agents went over to this address and told Moore they had a warrant for his arrest, advised him of his rights, searched him, made him strip to see if he had bullet wounds on him, due to the fact the dead man's gun had been fired, and then brought Moore back to Wrens,

Georgia where he made a full confession. Moore was placed in Jefferson County Jail 4/4/74 without bond.

On July 24, 1974, the family of the deceased, Fredger Stapleton, were contacted. His sister, Mrs. Mattie Bell Jenkins, age 75, stated that she was very close to her brother, that he lived alone and did all his own cooking and cleaning of his home that was necessary, that he usually walked to her house once or twice a week and that usually on Sundays she would cook his meal and carry it to him. She states that he usually sat in his backyard days permitting, whittling, and sometimes dozing in the sun. She also states that to her knowledge, he had no enemies and she could not understand why this young man took her brother's life for the amount of money that he did, that he could have tied him up and took the money without killing him. She further states that she feels that he should be punished to the fullest extent of the law, that she expressed feelings for the death sentence in this case. She stated that her brother was at home asleep when the young man came and disturbed him and took his life.

Alma Stapleton Harper, daughter of the deceased and an employee of Teachers Retirement System in New York, expresses wishes for the life sentence without parole. She states that he had been a strict father but a good father, and that she was the "apple of his eye". She also stated that she kept in constant contact with her father by mail and that he especially loved small children.

Joseph D. Harper, son-in-law of the deceased and an employee (motorman) for New York City Transient

Authorities for 13 years, stated that there was no punishment good enough for William Neal Moore for the crime that he committed. He further states that he was treated by his father-in-law like a son, that they would sit and talk and that they had an overall close relationship.

Olden Stapleton, brother of the deceased and a retired employee of General Motors, 28 years services, living in Lindon, New Jersey, stated that the severest punishment that this man could get is still not enough. He states that his brother was a cigar fiend, that he loved children, and that he lived with his mother until she died 1 1/2 years ago at the age of 93. He further states that his mother left him three $100 bills in an inheritance and that they could not be found and that he is sure his brother did not cash them in. He also stated that they had a close relationship, that he lived with his brother for some time while they were up-state and that he remembers when both of his brother's children were born. He stated that his brother was a really "nice guy".

Personal contact was made with William Neal Moore, Jefferson County Jail. During this interview, Moore seemed alert, aware of the circumstances of this case and answered all questions readily. He states that he was in a hospital in Ft. Gordon and he met this fellow, George Curtis, from Wrens, Georgia, that had wounds received from Service. At this time, Moore was in the hospital for a leg operation. He states that George Curtis told him about his uncle, Fredger Stapleton, who carried a lot of cash on him. He states that they were planning to rob him together but every time,

Curtis got drunk, so on the night of 4-2-74, around 12:00 midnight, he went over to the old man's house. (States that he and Curtis went out drinking and he left Curtis at his house drunk, parked his car at a laundermat) Moore states he entered the house through a window and went through rooms until he came to the old man's bedroom. He knocked on the door and Stapleton asked who is it. Moore states he opened the door, and while he was standing by the door the shotgun bumped him on the leg. He shot the man four times and during this time, the shotgun went off. The shotgun belonged to Stapleton. Stapleton fell back on the floor. Moore took the gun from the floor, went over to the man, found his pants containing two billfolds, containing $5400.00 all in $20 bills. He went back to his car, drove to Augusta to his trailer at 2506 Repot Drive and picked up his son which he had left with friends to babysit. He put the shotgun in a manhole at the Quickie Mart near the trailer park where he lived, put the money in envelopes and left it in the air ducts of the trailer, and put the guns under the mattress of the bed. He got up the next day and went to work. At approximately 12:30 a.m. GBI agents came to the door stating they had a warrant for his arrest for murder. He told them where the money and the pistol was, they got them. Moore states that GBI agents snatched him out of the door, frisked him, then made him go inside and strip to see if he had any gunshot wounds, put handcuffs on him. Daniel Berry and his girlfriend came and got the child. The child's mother came down and picked the child up the next day. Moore made a full

confession to the crime the same night he was picked up for the crime that he committed in Wrens, Georgia.

RECORD OF PREVIOUS OFFENSES:

(Juvenile)

3-8-62	Larceny of cars
4-4-62	Mollesting
12-6-63	Malicious neglect of property
9-9-64	Unarmed robbery
10-1-65	Petty larceny and intoxication
11-9-65	Incorrigible and curfew violation
7-1-66	Petty Larceny
6-22-67	Breaking and entering
8-31-68	Tampering with vending machines

(Adult)

7-22-69	Curfew violation during riot.

No further records could be found in State or Superior Court records of Jefferson County, Georgia. All of the above are from Ohio.

PERSONAL HISTORY:

Parents: Father is General James Moore, age 56 DOB 4/9/18, disabled for 15 years due to being in a mental institution but he is presently working. They lived off social security at the time of father being institutionalized. Moore's mother has multiple sclerosis but is a beautician. Her name is Margaret Willmean Jackson Moore, age 56, DOB 7/19/19. Subject has two brothers and two sisters: Norma Jean Gripper, age 34-1771 Rainbow Park, Columbus, Ohio; Regina

Walker, age 32, 1851 Newberry Street, Columbus, Ohio; James Douglas Moore, Jr., age 27, 721 Kembrill Place, Columbus, Ohio; and Terry Duran Moore, age 24, 1079 Omstead Apt. A, Columbus, Ohio. Moore also stated that his sisters and brothers would be here for his trial.

Religion: Catholic, Holy Cross Church; Father of Church unknown and attendance is irregular. Moore states that his religion came from his parents background. His father attends regularly. His mother is in a wheelchair from multiple sclerosis. Subject states that his mother read the Bible to him but he was undecided as to religion. When he was young, he attended regularly, but didn't take part in church activities.

Education: Fulton Street School (1, 2, 3 grades) 1956-60; Kent Street Elementary School (4, 5, 6 grades) 1960-63; Roosevelt Junior High (7, 8, 9 grades) 1963-66); South High School (10, 11) 1966-1968; Frankford High, Frankford, Germany, 12th grade 1:00 to 5:00 p.m. Moore states he failed the 3rd grade because his mother switched from public school to Catholic School (Holy Cross) and then back to Fulton School. He quit South High School to join the army. In the ninth grade he received an outstanding award for Art. History was his best subject and Englist was his poorest. When subject was placed on juvenile probation, his 8th grade teacher was also his Probation Officer, Mr. Scott. Moore states he took a correspondence course in Electronics and Technology with Laboratory. He had money problems but he finished except for two lessons in Cleveland, Ohio. He took a military correspondence course 95C-Correctional Confinement Specialist.

EMPLOYMENT:

1963-66	After School in Roosevelt Junior High, Ohio Youth Commission-obtained job for three years at $1.15 hr.
1967	Lowe & Dick Construction Company, 3 months in summer time $2.85/hr.
1968	Partnership with Robert Edwards and Robert Parker in painting company, 2 months: did paint trimming on house or inside.
1968-1969	Jeffery Manufactors-operated scoop loader for steel manufacturing for $3.87/hr. His reasons for leving was to join Army-Union Member.

Enlisted in Army on October 13, 1969

Basic:	Fort Know (sic), Kentucky, 2 months Fort Lenningwood, Missouri, 2 months Fort Benning, Georgia, 3 weeks Fort Dixie, New Jersey-transferred to Germany Frankfurt, Germany-30 months-June 12, 1973. First two months he worked as a Turn Key and for 16 months he was mail clerk. 709th M. P. Battalion, Mail Clerk and Manager of PX. During this time, he received a letter of achievement for working in the mail room, for his outstanding duties as a mail clerk.

Relisted (sic) on February 28, 1973, while in Germany. He is stationed now at Ft. Gordon, Georgia and has been since July 13, 1973.

HEALTH:

He was in good shape, physically, until while playing Unit football on post he tore his right knee up and

it had to reconstructed. He was hospitalized for 6 months at Fort Gordon. He has no psychiatric history but has an emotional fear of snakes.

MILITARY HISTORY:

Enlisted on October 13, 1969 and is presently still enlisted. He has served three years eight months with his highest rank being E4. His classification # is 275-48-2426. His commanding Officer is Captain Hatfield, Co. C, 2nd Batallion, Sch. Bde., USASESS (Southeastern Signal School) Extention 4178. His First Sergeant is Sgt. Sivic, 2nd Bn, Co. C, SESS. He has a clean bill, no articl 15. He received a letter of recommendation in basic training for outstanding soldier in basic training. He has an outstanding 109th mail clerk record in Germany and a life time guarantee of a job there if he ever returned.

See attached copies of Military History at Ft. Gordon.

ECONOMIC STATUS:
Cash: Nil
Liabilities: Car payment and life and car insurance
Rents apartment for $127.00/month-Government Housing Authority
Car-1973 Nova Chevrolet $2795.00

MARITAL STATUS:

Moore is married to Francine Carletina McClendon Moore, age 19, residing at 1149 East Rich Street, Columbus, Ohio. She is unemployed. She was attending school at the time of marriage, graduated and attending college for two semesters. The date of marriage is December 25, 1970. They have one child, 3 years of age,

William Neal Moore, Jr., born in May 11, 1971, in Columbus, Ohio, at University Hospital. Moore states that the last time he saw his wife was on April 6, 1974. He states that they seem to have no marriage problems and that he dated her for four years before marriage.

RECREATIONAL ACTIVITIES:

For approximately five years, Moore attended Kent Elementary School from 6:00 to 10:00 p.m., working with clay in sculpture work in recreation facilities. He played chess, table tennis, volley ball, and basketball.

Moore states that his closest friends are Robert Edwards, who played basketball with him in Junior High School and they hung around together; and Robert Parker who had the same interests as Moore.

COMMUNITY ATTITUDE:

Captain Hatfield, Commanding Officer of Ft. Gordon states that he has just been transferred to Ft. Gordon and does not know too much about this soldier. He states that he was not doing anything good or anything bad.

Personal contact was made with First Sergeant of the company who stated that he was transferred about the same time as the Commanding Officer. He states that he doesn't know of any trouble that Moore has been in except not coming in uniform to pick up his pay check.

Sergeant Reiner states that Moore was a squad leader for 12-16 men and he never received any back talk.

See attached copies for community attitude.

RECOMMENDATION:

This investigator does not wish to make a recommendation.

/s/ J. Clark Rachels
J. CLARK RACHELS
PROBATION & PAROLE SUPERVISOR

IN THE SUPERIOR COURT
OF TATTNALL COUNTY
STATE OF GEORGIA

WILLIAM NEAL MOORE, Petitioner	)	
v.	)	Civil Action No. ___
JOE S. HOPPER, WARDEN, Respondent	)	Habeas Corpus

AFFIDAVIT

GEORGIA, JEFFERSON COUNTY.

Personally appeared before the undersigned attesting officer, who under the laws of the State of Georgia is authorized to administer oaths, J. CLARK RACHELS, who after being duly sworn, on oath deposes and says that he is a duly appointed Probation-Parole Supervisor of the State of Georgia and that Jefferson County, Georgia, is assigned to his jurisdiction, that he has served in this capacity for the past seven years and he further says:

(a) That on the 4th day of June, 1974, upon WILLIAM NEAL MOORE entering a Plea of Guilty in Jefferson Superior Court to the offenses of Murder and Armed Robbery that he was instructed by the Court to make a pre-sentence investigation of the matter and make his findings known to the Court on the 17th day of July, 1974, same being the date set for sentencing WILLIAM NEAL MOORE on these charges;

(b) Deponent further says that he made the pre-sentence investigation directed by the Court, that he discussed the matter in detail with Hinton Pierce, Attorney at Law, Augusta, Georgia, Attorney for the

Defendant and with WILLIAM NEAL MOORE, Defendant, and based on information furnished by Mr. Pierce and several interviews with WILLIAM NEAL MOORE that he incorporated the information received in said pre-sentence report and contacted those parties that WILLIAM NEAL MOORE requested be interviewed and incorporated the information derived from them in the report;

(c) Deponent further says that on the 17th day of July, 1974, the date set for sentencing, he furnished, prior to sentencing, the original of the pre-sentence report to the Presiding Judge, HONORABLE WALTER C. McMILLAN, JR., that he furnished a copy of the complete report to HONORABLE H. R. THOMPSON, District Attorney, Middle Judicial Circuit of Georgia, and a copy of the complete report to MR. HINTON PIERCE, Attorney at Law, Augusta, Georgia, Attorney for the Defendant;

(d) Deponent further says that MR. HINTON PIERCE, Attorney at Law, Augusta, Georgia, Attorney for the Defendant, requested a short recess prior to sentencing, that he may have time to review the contents of the pre-sentence report in order to determine if he desired to make comments about those contents;

(e) Deponent further says that in his presence Attorney Pierce showed the pre-sentence report to WILLIAM NEAL MOORE and asked WILLIAM NEAL MOORE if the contents of the personal statement contained in the report is what WILLIAM NEAL MOORE related to the officers and WILLIAM NEAL MOORE answered in the affirmative;

(f) Deponent further says that the pre-sentence report furnished to the Court was the identical pre-sentence report furnished to the State and the Defendant;

(g) Deponent further says that he furnished no confidential information to the Court relating to this matter.

/s/ J. Clark Rachels
J. CLARK RACHELS
PROBATION-PAROLE SUPERVISOR
MIDDLE JUDICIAL CIRCUIT OF GEORGIA,
INCLUDING JEFFERSON COUNTY, GEORGIA.

Sworn to and subscribed before me,
this 20th day of March, 1978.
/s/ Michael R. Jones
~~NOTARY PUBLIC~~
~~MY COMMISSION EXPIRES~~
Clerk Superior Court
Jefferson County, Georgia

(p.40) HABEAS CORPUS - William Neal Moore

to Mr. Thompson and I think he and I both walked down stairs together and as I recall it, he filed it in the Clerk's office at that time. That's the way I remember it.

Q. Then this was after the proceedings in court?

A. Yes, sir. Now, I will say this. I might add this. I had the impression that when the Judge went out to make his decision, that when he came in, the sentence had already been prepared before he ever came to uh, Louisville that day. Of course, that could have been just for the purpose of him saving time in the event he did decide to impose the death penalty.

Q. How long was that recess that the court took? The, in order to, prior to returning the sentence?

A. I wouldn't think it was over 30-45 minutes at the most.

Q. Uh, do you recall seeing the presentence report?

A. No, sir, I haven't.

Q. You've already submitted, I think, an affidavit to that effect haven't you?

A. Yes, yes, I did.

Q. Uh, do you recall ever discussing with uh, Mr. Moore, the arrest record that appeared in it?

A. We talked about his juvenile offenses and I had discussed those with his family, they were . . .

Q. But not with reference to the presentence report?

A. No, no. I haven't, I'll say this, I have never seen a presentence investigation report prior to sentencing in any State Court (p.41) that I can recall. And I'm, I'm sure if I had seen it in this case, I would have remembered it, because it would have been most unusual. In the Federal Courts now, I think Judge Alimo, I know he makes you read it before hand. Uh, but in this case, when I went up to the Supreme Court I was, I was trying to remember, I knew I'd went through my entire file after I left up there and had I been given a copy of the presentence investigation report, I certainly would have had it in my file and I did not have it. And I've got two suitcases full of file back there, so, it would have been in there, if it had been given to me, I wouldn't have thrown it away, I would have had it. The only time I saw it aas (sic) in the transcript when I went up to the Supreme Court.

Q. Uh, when you argued or took the case to the Supreme Court on the appeal, uh, you, you attempted to argue uh, comparative sentencing?

The Court: Came to argue what, I'm sorry, excuse me.

Q. To argue comparative sentences.

The Court: Comparative, all right, okay.

A. Well my main argument was mitigat-, mitigating circumstances, that's . . .

Q. And you, you were personally aware of similar cases or even more aggravated cases?

A. Well when I submitted with my brief, of course, as Mr. Dunsbar, Dunsmore remembers I went outside the record and I submitted affidavits from two lawyers who had handled two similar cases.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL MOORE, PETITIONER	)	
vs.	)	CIVIL NO. ___
CHARLES BALKCOM, WARDEN,	)	
RESPONDENT	)	

PETITION FOR A WRIT OF HABEAS CORPUS

Pursuant to 28 U.S.C. 2241-54 and in conformity with Rule 2 of the rules governing such cases in the District Courts, William Neal Moore, by counsel, respectfully petitions this Court on the following basis for a writ of habeas corpus directed to the Respondent:

1. The Respondent is the Warden of the Georgia State Prison at Reidsville, Georgia, and there, within the jurisdiction of this Court, he holds the Petitioner under a sentence which the Jefferson Superior Court has pronounced upon him.

2. The Jefferson Superior Court originally pronounced its judgment on July 17, 1974.

3. Its judgment was that the Petitioner be put to death. His execution has been scheduled for 4 December, 1978.

4. It pronounced a single judgment on an indictment charging the Petitioner in two counts with the murder and armed robbery of Fredger Stapleton. If found as the sole statutory aggravating circumstance required by Georgia Code Annotated 27-2534.1 that the homicide "was committed while the accused . . . was engaged in the commission of another capital felony, i.e., armed robbery," id. (b) (2).

5. Its judgment rested upon a general plea of guilty.

6. The Hon. Walter C. McMillan, Jr., Judge of the Middle Judicial Circuit, pronounced judgment without the intervention of a jury.

7. The Petitioner made statements to the trial court during both the plea and sentencing proceedings.

8. As the Petitioner was sentenced to death, there was a mandatory direct appeal.

9. In February 1975, the Supreme Court of Georgia, one Justice dissenting, affirmed the conviction and sentence and shortly thereafter denied a motion for a rehearing, *Moore v. State*, 233 Ga. 861, 213 S.E.2d 829 (1975), cert. den., 428 U.S. 910 (1976). It affirmed against challenges to the constitutionality of the Georgia capital punishment statute and against a contention that the sentence in the particular case was comparatively disproportionate under the facts.

10. The Petitioner has filed other actions in the State courts assailing his conviction and sentence.

11(a). In 1977, he filed an action for a declaratory judgment in the Jefferson Superior Court seeking a resentencing on the ground that "at the time of his death sentence the trial judge may not have imposed it except for a mistaken belief that such sentence would never be upheld by the U.S. Supreme Court," *Moore v. State*, 239 Ga. 67, 235 S.E.2d 519 (1977). Relief was denied without a hearing and that order was affirmed on direct appeal.

(b). A subsequent effort in the trial court to withdraw his plea of guilty also proved futile. No hearing was held on that motion and the appeal was not perfected when the State Supreme Court declined to grant a stay of execution.

(c). Finally, the Petitioner also filed in the Tattnall Superior Court for a State writ of habeas corpus on the grounds that his conviction and sentence violated rights secured him under the Eighth and 14th Amendments because (1) his prior arrest record was presented to the trial judge in a pre-sentence report without the Petitioner or his counsel being afforded a fair opportunity to address it; (ii) his conviction and sentence were reviewed on a deficient record which lacked the transcript of the District Attorney's closing arguments; (iii) insofar as the conviction and judgment were for malice-murder, his guilty plea was legally unintelligent and involuntary and lacked a proper factual basis; (iv) he was denied his right to enjoy the effective assistance of counsel because he was left unaware of his right, absolute under Georgia Code Annotated 27-1404, to withdraw his plea of guilty after the oral pronouncement of judgment but before the written judgment was actually filed with the Clerk; and (v) his sentence was disparate and improperly reviewed on appeal from the standpoint of "similar cases, considering *both* the crime *and the defendant*," Georgia Code Annotated 27-2537(c) (3), because the death penalty has never been regularly imposed upon youthful offenders with no significant prior criminal record and no prior confinement, who have no prior history of violent behavior, who pose no obvious future threat to

society, who suffer no impairment to potential rehabilitation, and who (in the words of the trial judge) "did everything that a man could do after [he was] caught [to] to an honorable thing insofar as [his] true statements . . . , [his] cooperation with the official, pleading guilty to the mercy of the court" and exhibiting a "willingness . . . forthrightness in meeting what must be . . . a terrible, terrible experience." After a hearing, on July 13, 1978 the Tattnall Superior Court denied relief and dissolved its stay of execution. On October 17, 1978 the State Supreme Court denied an application for a certificate of probable cause to appeal and dissolved the stay of execution which it had previously ordered.

(d). During his efforts to appeal in the State habeas proceedings, the Petitioner also filed an action in this Court, *Moore v. Balkcom*, Civ. No. 78-224, under 28 U.S.C. 2254 when it appeared necessary in order to secure a stay of execution. That action was voluntarily dismissed without prejudice when the State Supreme Court granted a stay.

12(a). The District Attorney's arguments urging that the Petitioner be executed were not taken down or transcribed and they were thus not before the State Supreme Court when it reviewed the case on direct appeal.

(b). Without a full disclosure to the reviewing court of the basis for the death sentence, the procedures by which the Petitioner's sentence was imposed and sustained violate the requirements of the Eighth and 14th Amendments.

13(a). In the June 4, 1974 proceedings when the Petitioner tendered his plea of guilty, neither the elements of murder, the distinctions between malice-murder and felony-murder, and the factual basis of his offense was developed in any detail. Essentially, the Petitioner was asked only if he understood that he was charged with murder and armed robbery and whether he was in fact guilty.

(b). The only factual development for the charges occurred during the July 17 sentencing proceedings and derived from the Petitoner's confession and in-court statement. He stated, "I didn't have no intention of killing him. When I went in there, he came out there with a shotgun and hit me in the leg, it scared me, made me shoot him." "I was fixing to go into his bedroom, and he came out with his shotgun and he fired, and I just shot." Other evidence confirmed that the victim fired his shotgun as recounted by the Petitioner.

(c). Nowhere in the whole proceedings or in his lawyer's counseling were the legal elements of malice-murder and felony-murder outlined to the Petitioner. The Petitioner did not comprehend the distinction but he never admitted that he actually intended to kill the victim as is necessary for malice-murder.

(d). The trial judge made no specific notation of which particular type of murder the Petitioner was adjudged guilty of but, consistently with Georgia law which makes the felony a lesser included offense within felony-murder, it imposed no separate judgment for the armed robbery count.

(e). While the distinction is unimportant on the question of guilt, it is of critical importance from the standpoint of the proper comparison of the case with "similar cases, considering . . . the crime" since felony-murder may involve an indeliberate homicide for which death should not be exacted.

(f). The Petitioner did not intelligently or voluntarily plead guilty to killing the victim deliberately and the factual basis for that offense did not exist.

14(a). The Petitioner was unaware that he had a right, absolute under Georgia Code Annotated 27-1404, to withdraw his plea of guilty in the interval between the oral pronouncements of the sentence and the actual filing of the written judgment with the clerk.

(b). During this critical stage of the proceedings, he was denied his right under the Sixth and 14th Amendments to have the effective assistance of counsel.

15(a). At the time of the homicide, the Petitioner was under 23 years of age. He had no significant criminal record and no record whatever of violent behavior. He had not previously even been penally confined. There was no indication that he suffered any sort of psychiatric or personality disorder which would make him a future threat to society or which would impair his rehabilitation. His conduct and attitude, from his arrest through his conviction, was distinguished by remorse for his act and cooperation with the authorities.

(b). Neither in Georgia nor elsewhere has the death penalty ever been reserved for such offenders

and the State cannot show a single such case, much less an intelligible pattern.

(c). On its face, Georgia Code Annotated 27-2537(c) (3) requires the State Supreme Court to compare any death sentence to those in "similar cases, considering both the crime and the defendant," and it was partially on the basis of this safeguard that the Supreme Court sustained Georgia capital sentencing procedures.

(d). However, the Supreme Court of Georgia failed to apply the second prong of its responsibilities to assure against the wanton and freakish imposition of the death sentence but compared the Petitioner's sentence only with "similar cases, considering . . . the crime."

(e). Since the duty of comparison was allocated only to the State Supreme Court, the trial judge never undertook to compare the sentence to those in "similar cases, considering . . . the defendant." Moreover, the sentence does not otherwise reflect the conscience of the community because it was imposed without the intervention of a jury.

(f). From the standpoint of comparable defendants and from the standpoint of the mitigatory circumstances which pertained to him, the Petitioner's sentence of death was imposed arbitrarily and freakishly on a member of a category of salvagable offenders for whom the extreme penalty has never been reserved. In the Petitioner's particular case, it constitutes cruel and unusual punishment prescribed by the Eighth and 14th Amendments.

16. All of the grounds raised in Paragraphs 12-15 have been presented to the State courts in either the direct or the pending collateral proceedings.

17. The Hon. Hinton Pierce was retained by the family to represent the Petitioner and did so through all of the proceedings in the trial court. His address is 213 Southern Finance Building, Augusta, Georgia 30902. James C. Bonner, Jr., Prisoner Legal Counseling Project, University of Georgia School of Law, Athens, Georgia 30601, has represented the Petitioner as volunteer counsel in the proceedings for relief by writ of habeas corpus.

18. As previously alleged, no separate judgment was ever entered on the armed robbery count.

19. The Petitioner has no outstanding sentence to be served besides the one at issue in this case.

WHEREFORE, the Petitioner respectfully requests that this Court grant the Petitioner relief from his sentence of death as required by law and justice.

This 17th day of November, 1978.

/s/ James C. Bonner, Jr.
Counsel for the Petitioner

Prisoner Legal Counseling Project
University of Georgia School of Law

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL ("Billy") MOORE, PETITIONER	)	
vs.	)	CIVIL NO. ___
CHARLES BALKCOM, WARDEN, RESPONDENT	)	

AFFIDAVIT SUPPORTING PETITION

William Neal Moore, being first duly sworn, identifies himself as the Petitioner named in the above-styled application for a writ of habeas corpus and states upon his oath that the matters and things sets forth therein are true and correct to the best of his knowledge and belief.

/s/ William N. Moore
William Neal Moore

Sworn to and subscribed before me this 24th day of October, 1978.

/s/James C. Bonner, Jr.
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL MOORE, PETITIONER	)	
vs.	)	
CHARLES BALKCOM, WARDEN,	)	CIVIL NO. ___
RESPONDENT	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1978, I mailed first-class a copy of the attached pleadings to each of:

1. Charles Balkcom, Warden
   Georgia State Prison
   Reidsville, Georgia 30453

2. Attorney General Arthur Bolton
   Assistant Attorney General John Dunsmore
   132 State Judicial Building
   40 Capitol Square, S.W.
   Atlanta, Georgia 30334

/s/ James C. Bonner, Jr.
Counsel for the Petitioner

Prisoner Legal Counseling Project
University of Georgia School of Law
475 North Lumpkin Street
Athens, Georgia 30601
(404) 542-4241

Prisoner's Name: WILLIAM NEAL MOORE

Prison Number: D-103403

Place of Confinement: Georgia Diagnostic and Classification Center, Jackson, Georgia.

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WILLIAM NEAL MOORE, Petitioner,	)	
vs.	)	Civ. Action No. 478-309
WALTER D. ZANT, Warden,	)	
Respondent.	)	

AMENDED PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Preliminary explanation: The allegations of this petition are in the form dictated by the Model Form For Use in Applications for Habeas Corpus under 28 U.S.C. §2254, prescribed by the Rules Governing Section 2254 Cases in the United States District Courts.

Paragraphs 1 through 11 state the history of prior state court proceedings; paragraphs 12 through 14 summarize the facts of the case; paragraphs 15 through 47 state the petitioner's federal constitutional claims; and paragraphs 48 through 53 contain required technical information.

1. The name and location of the court which entered the judgment of conviction and sentence under attack are:

The Superior Court of Jefferson County,
Jefferson County Georgia.

2. The date of the judgment of conviction and sentence is July 17, 1974.

3. The sentence is that petitioner be put to death by electrocution.

4. The nature of the offense involved is that the petitioner was convicted of the offense of murder while engaged in the commission of another capital felony, to wit, armed robbery, in violation of Ga. Code Ann. §27-2534.1(b)(2).

5. The petitioner entered a plea of guilty to the offense charged.

6. There was no trial as to the issue of guilt or innocence. The sentencing hearing was had before the court without intervention of a jury.

7. The petitioner made statements to the court during the entry of the guilty plea, and the petitioner testified during the sentencing hearing before the court.

8. The petitioner appealed his conviction and sentence of death.

9. The facts of the petitioner's appeal are as follows:

(a) The Supreme Court of Georgia affirmed the petitioner's conviction and sentence in a *per curiam* opinion, with one justice dissenting, on February 12, 1975; on March 4, 1975, that Court denied a timely petition for rehearing. *Moore v. State*, 233 Ga. 861, 213 S.E. 2d 829 (1975).

(b) On July 6, 1976, the Supreme Court of the United States denied a timely petition for a writ of *certiorari*. *Moore v. Georgia*, 428 U.S. 910 (1976). (Justices Brennan and Marshall were of the opinion that *certiorari* should be granted.) On October 4, 1976, the Supreme Court denied a timely petition for rehearing. *Moore v. Georgia*, 429 U.S. 873.

10. Other than the appeal described in paragraphs 8 and 9 above, the only petitions, applications, motions, or proceedings filed or maintained by the petitioner with respect to the 1974 conviction and sentence of the Superior Court of Jefferson County are those described in paragraph 11 below.

11.(a) On ___, 1977, the petitioner filed an action for a declaratory judgment in the Jefferson County Superior Court seeking a new sentencing proceeding. Relief was denied without a hearing, and that order was affirmed by the Georgia Supreme Court. *Moore v. State*, 239 Ga. 67, 235 S.E.2d 519 (1977). On ___ 1977, the Supreme Court of the United States denied a timely petition for writ of *certiorari*. ___ U.S. ___ (1977).

(b) On ___, 1977, the petitioner filed a motion to withdraw the plea of guilty. The motion was denied without a hearing, and the appeal was not perfected when the Supreme Court of Georgia declined to grant a stay of execution.

(c) On ___, 1977, the petitioner filed a petition for writ of *habeas corpus* in the Superior Court of Tattnall County; a hearing was held on March 30, 1978, and on July 13, 1978, the court denied all relief sought. On October 17, 1978, the Supreme Court of Georgia

denied an application for a certificate of probable cause to appeal from the denial of *habeas* relief by the trial court.

(d) On ___, 1978, the petitioner filed a petition for writ of *habeas corpus* and application for stay of execution in this Court, *Moore v. Balkcom*, Civ. No. 78-224. That action was voluntarily dismissed without prejudice when the Supreme Court of Georgia granted petitioner a stay of execution.

12. The petitioner was convicted and sentenced in violation of his rights guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, for each of the reasons set forth below.

I. INTRODUCTORY FACTS

13. William Neal Moore pled guilty, was convicted and was sentenced to death for the murder and armed robbery of Fredger Stapleton, which offense occurred on April 2, 1974.

14. At the sentencing hearing on July 17, 1974, the State and the defense presented testimony, which the Supreme Court of Georgia summarized as follows:

> The testimony and other evidence revealed the appellant had been a member of the U.S. Army, and a former military policeman, where he met George Curtis, a nephew of the victim Fredger Stapleton. Curtis told him about his uncle Fredger Stapleton having money and showed him where he lived. In the words of the defendant, "We planned this, he wanted to burn his uncle up, he would get the money and burn him up in the house, and we went over there and Curtis got scared after he went into

> the house, that was the first time. We was drinking, we had been drunk . . . We went over to the house . . . We went to the back door, and we got in between one of the bedrooms and the front room. There was a locked door, we left and went back over to Curtis' house. Curtis, he left, and I went back over there . . . "
>
> In the late evening of April 2, 1974, appellant apparently re-entered the Stapleton home through a bedroom window. After gaining entrance, he was surprised by Stapleton, who proceeded to fire a shotgun at him. Appellant fired all five shots in his .38 caliber pistol at Stapleton. Stapleton subsequently died from two bullet wounds in the chest. After shooting Stapleton, appellant proceeded to remove two billfolds from the victim's pocket and took the victim's shotgun. Appellant then left through the front door of the Stapleton home and walked to his automobile which was parked by a laundromat nearby. He proceeded to his residence, burned the victim's wallets, and disposed of the shotgun. The money taken from Stapleton amounted to $5,700, which appellant subsequently surrendered to officers. Evidence at the scene implicated the appellant and corroborated his statement.
>
> Appellant denied any intention of killing Stapleton: "I didn't have no intention of killing him. When I went in there, he come out there with a shotgun and hit me in the leg, it scared me, made me shoot him, and I'm sorry for what I did and ask for mercy of the Court."
>
> . . . .
>
> The trial judge found as mitigating circumstances that the appellant did everything that a man could do after he was caught, and did an honorable thing in making true statements, cooperating with the officials, and pleading guilty. In addition to these circumstances appellant urges

consideration of the following: that he fully cooperated with the police; that he is twenty-three years old; that he is not an experienced criminal; and that he started shooting from a combination of fright and intoxication.

Moore v. State, 233 Ga. 861, 862, 865; 213 S.E.2d 829 (1975).

II. GROUNDS OF CONSTITUTIONAL INVALIDITY OF PETITIONER'S CONVICTION AND SENTENCE.

15. Punishment of the petitioner by death is cruel and unusual in consideration of all factors relating to the offense and the offender, including mitigating circumstances. For this reason, the imposition and execution of the death sentence against the petitioner violates the rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts supporting petitioner's claim that his punishment is cruel and unusual in consideration of all the factors relating to the offense and the offender, including mitigating circumstances.

16. Various circumstances both within and without the record are present in this case which, by common consensus, should be deemed to warrant mitigation of petitioner's sentence. They include the following:

(a) The petitioner was twenty-three years old at the time of the offense.

(b) The petitioner had no prior record of violent crime.

(c) According to the testimony of the petitioner, which was corroborated by the State's evidence, the petitioner did not intend the death of the victim.

(d) According to the testimony, the petitioner had been drinking heavily at the time the offense allegedly was committed and therefore lacked the capacity deliberately to intend the death of the victim.

(e) At the time of the offense, the petitioner was a member of the United States Army and had been for several years, and had served his country in the United States and Germany.

(f) At the time of the offense, the petitioner was estranged from his wife and had custody of their three-year-old son and was the sole caretaker and provider for their son.

(g) At the time of the offense, the petitioner's paycheck was being sent directly to his wife, pursuant to an arrangement made when the petitioner was in the service in Germany and when the petitioner's wife had custody of their child, and the petitioner was without funds to care for his son properly.

(h) The petitioner cooperated fully with the police, confessed his involvement in the offense, and pled guilty to the charges. In the words of the sentencing judge, "You, in my opinion, did everything that a man could do after you were caught and did an honorable thing insofar as your true statements made, your cooperation with the officials, pleading guilty to the mercy of the Court . . . I also found . . . mitigating circumstances . . . those being your willingness and

your forthrightness in what must be to you a terrible, terrible experience."

(i) The circumstances leading up to the crime were initiated by another person, George Curtis, who participated in the early stages of the crime, yet only the petitioner was tried for crime.

17. The sentence of death that was imposed by the trial judge against the petitioner was based in part on a pre-sentence report which was not disclosed to the petitioner, in violation of the rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States, as set forth in *Gardner v. Florida*, 430 U.S. 349 (1977).

Facts supporting petitioner's claim that his punishment is unconstitutional, because it was based in part on an undisclosed pre-sentence report.

18. The sentencing judge requested that a pre-sentence investigation be conducted, and pursuant to that request, the Department of Offender Rehabilitation Community-Based Services prepared a "Case Study" concerning the petitioner and submitted the Case Study to the sentencing judge on July 17, 1974. The Study is thirteen pages long; five pages were prepared by J. Clark Rachels, Probation and Parole Supervisor, and the other eight pages are reports from investigative officers and other State witnesses. The report includes a section entitled "Record of Previous Offenses," and includes summaries of interviews with relatives of the deceased, and includes detailed, personal information about the petitioner.

19. The pre-sentence report entitled Case Study was not disclosed to either the petitioner or his attorney.

20. The conviction was obtained against the petitioner by a plea of guilty that was not knowingly, voluntarily, or intelligently made, in violation of petitioner's rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States.

Facts supporting petitioner's claim that his plea of guilty was not made knowingly, intelligently, or voluntarily.

21. At his arraignment on June 4, 1974, the petitioner entered a plea of guilty to the indictment. After an evidentiary hearing conducted on July 17, 1974, the Court convicted the petitioner on his plea of guilty and sentenced him to death.

22. The petitioner pled guilty to a two-count indictment. The first count of the indictment charged the petitioner with malice murder. At no time was the petitioner advised, by his attorney or by the Court, that one of the elements of malice murder is specific intent to kill the victim. Indeed, in his testimony at the hearing on July 17, 1974, the petitioner stated that he did not intend to kill the victim. Consequently, the petitioner's plea of guilty to count one in the indictment was not voluntarily, knowingly, or intelligently entered.

23. On July 17, 1974, immediately after finding the petitioner guilty of malice murder as charged and pursuant to the petitioner's plea of guilty, the trial judge sentenced the petitioner to death. The petitioner was not advised, by his counsel or by the Court, that he

could withdraw his plea of guilty after the sentence of death had been pronounced.

24. The death penalty is in fact administered arbitrarily, capriciously, and whimsically in the State of Georgia; and the petitioner was sentenced to die, and will be executed, pursuant to a pattern and practice of wholly arbitrary and capricious infliction of the death penalty, in violation of his rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts supporting petitioner's claim that the death penalty is administered arbitrarily, capriciously and whimsically by the State of Georgia.

25. The Supreme Court of the United States upheld the Georgia Punishment Statutes "[o]n their face" only upon the assumption that the procedures mandated by the statutes would assure that sentences of death are not wantonly or freakishly imposed. *Gregg v. Georgia*, 428 U.S. 153, 198 (1976). As those statutes have been applied, however, death sentences in Georgia have in fact been imposed in an arbitrary and capricious manner.

26. Georgia cases similar to that of the petitioner in many respects, including the nature and circumstances of the offense, the age, the prior record, and the life and character of the accused, have resulted in lesser punishments than death.

27. Georgia cases more aggravated than that of the petitioner in many respects, including both the nature and circumstances of the offense and the age,

prior record, relative culpability, and the life and character of the accused have resulted in lesser punishments than death.

28. There is no rational, constitutionally permissible way of distinguishing the few cases in which the death penalty has been imposed from the many cases in which it has not been imposed in Georgia.

29. Georgia statutory provisions and actual practices governing appellate review of death sentences:

(a) denied petitioner the effective assistance of counsel;

(b) denied petitioner a fundamentally fair hearing and a reliable determination of the issue of life or death, and;

(c) denied petitioner the effective assistance of counsel and the basic tools of an adequate defense and appeal because of his poverty, all in violation of his rights guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

Facts supporting the claim that Georgia appellate procedures denied petitioner the effective assistance of counsel, the tools of an adequate defense and a fundamentally fair hearing.

30. The Supreme Court of the United States upheld the constitutionality of the Georgia capital punishment statutes "[o]n their face" only upon the assumption that they provided for meaningful and effective appellate review that would function adequately to prevent arbitrariness in capital sentencing, including review procedures through which the Georgia

Supreme Court would compare each capital case with other cases to determine whether the sentence in the case under consideration was disproportionate to that administered in other, similar cases. *Gregg v. Georgia*, 428 U.S. 153, 166-67, (1976).

31. In fact, a number of the cases cited by the Georgia Supreme Court in its comparative "proportionality review" in petitioner's case pre-date *Furman v. Georgia*, 408 U.S. 238 (1972), and were condemned as arbitrary and capricious by *Furnam*. Moreover the Georgia Supreme Court in its review of petitioner's death sentence did not consider an adequate sample of homocide cases which did not result in death sentences, including cases that are not rationally differentiable from petitioner in relation to the justification for imposing capital punishment.

32. In its comparitive "proportionality review," the Georgia Supreme Court considers and refers to prior cases in which the reported decisions do not describe the underlying facts of the crime or the character of the criminal offender. This practice completely disables counsel for an indigent condemned inmate like petitioner from preparing or presenting argument, from representing his client in any effective way in the process of appellate review, or from ascertaining and responding to facts deemed significant by the Georgia Supreme Court in its sentencing review, because such counsel cannot practicably obtain adequate information relating to the comparison cases by reason of his client's poverty.

33. The Georgia Supreme Court, in both petitioner's case and in those of other death-sentenced persons, has never articulated or followed any clear standard of review, with respect to the findings it is required to make under Ga. Code Ann. §27-2537(c).

34. The Supreme Court of the United States upheld the constitutionality of the Georgia capital punishment statutes only upon the assumption that they provided for meaningful appellate review, including review procedures through which the Supreme Court of Georgia would determine whether the sentence of death was imposed "under the influence of passion, prejudice, or any other arbitrary factor." However, in its review of petitioner's death sentence, the Georgia Supreme Court did not consider the final argument made to the judge by the prosecuting attorney, since the final argument was not transcribed or made part of the record on review. Without having before it the prosecuting attorney's final argument to the judge concerning sentence, the Supreme Court of Georgia could not determine whether elements of passion, prejudice, or any other arbitrary factors were placed before the judge for his consideration in determining sentence.

35. The sentence of death was imposed upon the petitioner under the influence of passion, prejudice, or other arbitrary factors, in violation of petitioner's rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts supporting the claim that the sentence of death was imposed under the influence of passion, prejudice, or other arbitrary factor.

36. Shortly before the petitioner was arraigned, pled guilty and was sentenced to death for the murder and armed robbery of Fredger Stapleton, an elderly couple had been murdered in Jefferson County. The entire community was upset and outraged by the unsolved murder of the elderly couple. Not only were the district attorney who prosecuted the petitioner and the judge who sentenced the petitioner residents of this community, they were also elected by the citizens of this community.

37. The petitioner's death sentence was imposed under the influence of an arbitrary factor, in violation of the rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts supporting petitioner's claim that the death sentence was imposed under the influence of an arbitrary factor.

38. The sentencing judge did not believe that the petitioner would actually be executed as a result of the judge's sentence of death. After pronouncing the sentence of death, the judge stated, "I have many, many reservations about whether there will be an execution by government authorities in this county ever again."

39. The sentencing judge did not believe that the petitioner would actually be executed, because the judge thought that the Georgia death penalty statute would be declared unconstitutional because it was not a mandatory statute.

40. The sentencing judge did not believe that he had the discretion to refrain from imposing the death

sentence, even though he thought that death was disproportionate as compared with sentences imposed in similar cases.

41. The sentencing judge mistakenly believed that the mitigating circumstances had to be, "sufficient to wipe out the aggravating statutory circumstances," before he could impose a life sentence.

42. The theoretical justifications for the death penalty are groundless and irrational in fact, and death is thus an excessive penalty which fails factually to serve any rational and legitimate social interests that can justify its unique harshness, in violation of petitioner's rights guranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts supporting petitioner's claim that the theoretical justifications for the death penalty are groundless in fact.

43. The death penalty provided by Georgia law violates the principle that a criminal sanction, "cannot be so totally without penological justification that it results in the gratuitous infliction of suffering." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

44. Executions do not have an identifiable deterrent effect. As the Georgia State Department of Offender Rehabilitation acknowledged in a November, 1972 study entitled *Capital Punishment in Georgia: An Empirical Study 1943-1965*, "Despite the fact that Georgia used the death penalty more often than any other state in the country, its homicide rate was also the highest in the nation. *This suggests that the death*

penalty is not effective as a deterrent." Study at 451 (emphasis added).

45. Executions by the State set socially-sanctioned examples of, and provide an inducement to, violence.

46. Public sentiment for retribution is not so strong as to justify use of the death penalty.

47. There is no penal purpose served by the death penalty which is not more effectively or efficiently served by life imprisonment.

48. Each of the grounds listed in paragraphs 15 through 47 has been presented to the Georgia courts, and each has been rejected by the Georgia courts.

49. There are no petitions or appeals pending presently in any state or federal court relating to the judgment and sentence under attack.

50. William Neal Moore was represented by the following attorneys:

(a) At trial and on appeal to the Supreme Court of Georgia, by Hinton R. Pierce, Augusta, Georgia;

(b) On petition for *certiorari* to the Supreme Court of the United States, by Hinton R. Pierce.

(c) On the motion for a declaratory judgment (and the appeal from denial of that motion), and on the motion to withdraw the plea of guilty, by Hinton R. Pierce;

(d) On the state *Habeas corpus* petition in the Superior Court of Jefferson County, by James C. Bonner, Jr., Athens, Georgia.

51. Hinton R. Pierce was retained by petitioner's family to represent the petitioner at trial. Mr. Pierce was court-appointed to represent the petitioner on appeal on the basis of findings that the petitioner was indigent and unable to pay private counsel any longer. The other attorneys named above have represented the petitioner as volunteers without compensation.

52. On the judgment of Juy 17, 1974, that is challenged in this proceeding, the petitioner was sentenced to two counts of one indictment, and only on one indictment, in the same court, at the same time.

53. The petitioner has no sentence to serve other than the sentence of death which is challenged herein.

WHEREFORE, the petitioner William Neal Moore prays that this Court:

1. Issue a writ of *habeas corpus* to have petitioner brought before it to the end that he may be discharged from unconstitutional confinement and restraint and/or relieved of the unconstitutional sentence of death;

2. Conduct a hearing at which proof may be offered concerning the allegations of this petition;

3. Permit the petitioner, who is indigent, to proceed without prepayment of costs or fees;

4. Grant the petitioner, who is indigent, sufficient funds to secure expert testimony necessary to prove the facts as alleged in this petition;

5. Grant the petitioner the authority to obtain subpoenas *in forma pauperis* for witnesses and documents necessary to prove the facts as alleged in this petition;

6. Allow the petitioner a period of sixty days, which period shall commence after the completion of any hearing this Court determines to conduct, in which to brief the issues of law raised by this petition;

7. Stay the petitioner's execution pending final disposition of this petition; and

8. Grant such other relief as may be appropriate.

WHEREFORE, William Neal Moore, being first duly sworn under oath, states that he has read the above amended petition for writ of *habea corpus* and states that the information contained herein is true and correct to the best of his knowledge, information, and belief.

/s/ William Neal Moore
William Neal Moore, Petitioner

Sworn to and subscribed before me this ___ day of ___, 1980.

/s/
Notary Public

RESPECTFULLY SUBMITTED, this 1st day of October, 1980.

/s/ H. Diana Hicks
H. Diana Hicks
P.O. Box 120636
Nashville, Tennessee 37212
(615) 383-9610

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I certify hereby that on this 1st day of October, 1980, I served a copy of the foregoing AMENDED PETITION upon John Dunsmore, 132 State Judicial Building, 40 Capital Square, Atlanta, Georgia, 30334, who is the attorney for the respondent, by depositing same in the United States mail, properly addressed and postage prepaid.

/s/ H. Diana Hicks

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL MOORE, Petitioner, pro-se	)	
Vs.	)	CIVIL NO. CV 478-309
CHARLES BALKCOM, WARDEN,	)	
Respondent	)	

AFFIDAVIT SUPPORTING PETITION

William Neal Moore being duly sworn identifies himself as the Petitioner named in the above styled application for Amendment to Writ of Habeas Corpus and states upon his oath that the matters and things set forth are true, and correct to the best of his knowledge and belief.

/s/ William N. Moore
William Neal Moore
Pro-se

Sworn to and Subscribed before me this 15 day of Feb., 1979.

/s/ John Woods
Notary Public

My Commission Expires: JOHN L. WOODS, Notary Public, Georgia State at Large, My Commission Expires May 9, 1980.

SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL MOORE, Petitioner, pro-se	)	
Vs.	)	CIVIL NO. CV 478-309
CHARLES BALKCOM, WARDEN,	)	
Respondent	)	

AFFIDAVIT OF POVERTY

William Neal Moore, being first duly sworn, identifies himself as the Petitioner in the above-styled Petition in which he seeks a amendment to a writ of Habeas Corpus under 28 U.S.C. 2254 challenging his sentence of death on grounds, inter Alia, that it violates his rights secured him by the Sixth, Eighth and Fourteenth Amendments because (1) Ineffectiveness of Counsel. (2) Unconstitutional Review on Direct Appeal, in the State Supreme Court.

He further states upon his oath, however, that he has ($___ in his prison account, that he is an indigent and that, although he believes in good faith that he is entitled to the relief that he seeks, he is unable to prepay or post security for the fees and costs normally required in an action of this nature.

His petition for leave to proceed under 28 U.S.C. 1915 is Attached.

/s/ William N. Moore
William Neal Moore
Petitioner Pro-se

Sworn to and Subscribed before me this 15 day of Feb., 1979.

/s/ John L. Woods
Notary Public

My Commission Expires: JOHN L. WOODS, Notary Public, Georgia State at Large, My Commission Expires May 9, 1980.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

WILLIAM NEAL MOORE, Petitioner, pro-se	)	
Vs.	)	CIVIL NO. CV 478-309
CHARLES BALKCOM, WARDEN, Respondent	)	

AMENDMENT TO WRIT OF HABEAS CORPUS PETITION

William Neal Moore being first duly sworn, identifies himself as the Petitioner in the above-styled Petition in which he seeks a (sic) amendment to a Writ of Habeas Corpus under 28 U.S.C. 2254 challenging his sentence of Death on grounds, inter alia, that it violates rights secured him by the Sixth, Eighth and Fourteenth Amendments because;

Petitioner did not receive the effective assistance of counsel in;

(A) Counsel's failure to investigate and challenge to the composition to the Grand Jury of Jefferson County.

(B) Counsel's failure to inform the petitioner that he could challenge the Grand Jury.

(C) Counsel's failure to investigate the actual prejudice of Jefferson County and to seek a change of venue.

(D) Counsel's failure to request that the closing arguments of District Attorney and his arguments concerning punishment, aggravating and mitigating circumstances be transcribed for appeal review by the Georgia Supreme Court.

(E) Unconstitutional cases used in the Direct Review by the Georgia Supreme Court in comparison of the death sentence.

INEFFECTIVE ASSISTANCE OF COUNSEL

(A) Counsel's failure to investigate and challenge to the composition to the Grand Jury of Jefferson County.

i. In the Habeas Corpus hearing in Tattnall County 'T-44'.

Q. Mr. Pierce would you tell us what you did by way or pretrial investigation or investigation into the case?

A. Well, of course, I interviewed Billy several times. I've talked with investigating officers. I saw the confession by the way which was already, it was also recorded in addition I believe to being typed out, I never heard the recorded statement. I could not find any investigation to make to. That I could find that would change what we had.

Petitioner's lawyer made no investigation of procedures in Jefferson County and had no basis in research or information upon which to evaluate a Grand Jury challenge. The conclusion that petitioner was denied the effective assistance of counsel is further warranted by the fact that the exclusion issue was being raised by other defendant being tried after the time of petitioner trial in Jefferson County, in the same year only six months later, There is no constitutionally valid excuse for counsel's default in this case.

States cannot, consistent with due process, subject a defendant to Indictment and Trial by a jury that has been selected in an arbitrary and Discriminatory manner. In violation of the Constitution and laws of the United States. Illegal and unconstitutional Grand and Jury selection procedures cast doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases. And they increase the risk of actual bias as well.

Unequivocally, death cases are different both in degree and kind from all other cases. Gregg v. Georgia, 428 U.S. 153 U.S. Death cases therefore, require special scrutiny to determine that both guilt and sentence phases comply with Due Process. Gardner v. Fla. 430 U.S. 349 (1977); Smith v. Hopper, 240 Ga. 93, 94 (1977). The failure of the attorney to raise the issue of exclusion constitutes gross negligence and incompetency, and makes petitioner's death sentence unconstitutionally arbitrary. "In accord Hawes v. State, 240 Ga. 327 (1977). The failure of Petitioner's counsel to raise the issue of systematic exclusion of blacks, women, and

young people from grand and traverse juries, particularly where the excluded groups were precisely those most scrupled against the death penalty, more than demonstrates the denial of effective assistance of counsel in this case.

In Habeas Corpus hearing, T-45, Mr. Pierce stated that he knew of no witness that could have possibly changed the outcome of the case.

Q. Mr. Pierce based upon your examination of the confession and discussions with the investigating officers as well as your conferences with Mr. Moore. What if, any witnesses would there have been who may have changed, or possibly could have changed the outcome of the case had you gone to a jury?

A. I don't know of any that would have been helpful to him.

Petitioner's counsel failed to follow up in investigation after talking to the investigating officers and reading the confession because, George Curtis is spoken of as being with the petitioner during the first phase of the crime, and was older than petitioner, seeking the influence which he had on petitioner in this case, there was no interview of George Curtis by Attorney Pierce.

(B) Counsel's failure to inform the Petitioner of his rights that he could challenge the Grand Jury.

In Habeas Corpus hearing, T-48, Mr. Pierce states as to what his advice was with various constitutional aspects concerning a guilty plea.

Q. And I believe you had, said earlier that you did discuss with Mr. Moore the various constitutional aspects concerning a guilty plea.

A. I explained to him everything I could think to explain to him what his rights were, what the procedure would be or could be, and I can't think of anything I did not tell him.

Q. All right, is this your usual custom and practice?

A. Yes.

As the record shows, Mr. Pierce advice to guilty pleas in usual custom and practice does not with grand jury challenging, only the procedures of a guilty plea.

Petitioner was not informed by counsel about his constitutional rights with respect to the Grand Jury composition, nor how the Grand Jury is selected or that blacks were systematically excluded, and petitioner's attorney did not tell him that failure to challenge it would preclude him from later raising that issue.

(C) Counsel's failure to investigate the actual prejudice of Jefferson County, and after finding such prejudice to seek a change of Venue.

In the Habeas Corpus hearing, T-38.

Q. Okay Mr. Pierce, tell us briefly, how you arrived at your advice to Mr. Moore to plead guilty, considerations?

A. Well, as I say, the confession had already been given prior to the time I was, knew anything

about the case and it looked to me like it was iron clad confession, I saw no way around it. The community there was in a turmoil at that time over another vicious killing where, there was torture and so forth. And I felt like we just the best thing we could do in this case was to look for mercy and that's what we were looking for.

Now according to Mr. Pierce feeling and knowledge of the Birt case he felt that the community was still in turmoil, nevertheless, Mr. Pierce knew that District Attorney Thompson was seeking the Death Penalty for the petitioner, and the pleadings of June 4th, 1974, and trial transcript bear this out. Mr. Pierce did not challenge the Grand Jury to prove the actual prejudice, nor did he seek a motion for change of venue because he felt like the community was still in a turmoil.

Surely a challenge to the indictments, the unconstitutional Grand Jury would have given both the community time to cool off, the judge, and District Attorney also, even to provide a much better chance for the petitioner to receive the mercy of the court. And the records reflect there were no pretrial motions filed with the court.

This clearly fall within the range of ineffective assistance of counsel. In Pitts v. Glass, 231 Ga. 638, 639 (1974) the court abandoned the sham, mockery test for determining effectiveness of counsel and adopted the standard in Mackenna v. Ellis, 280 F. 2d 592 (5th Cir. 1960); "We interpret the right to counsel as the right to effective counsel. We interpret counsel to mean not

errorless counsel, and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonably effective assistance." In accord Hawes v. State, 240 Ga. 327 (1977). The failure of petitioner's counsel to raise the issue of systematic exclusion of blacks, women, and young people from Grand and Traverse Juries, particularly where the excluded groups were precisely those most scrupled against the death penalty more than demonstrates the denial of effective counsel in this case.

In order to obtain release on federal habeas corpus under these circumstances, respondent must not only establish the unconstitutional discrimination in selection of Grand Jurors. He must also establish that his attorney's advice to plead guilty without having made inquiry into the composition of the Grand Jury rendered that advice outside the "Range of competence demanded of attorney in criminal cases." Tollett v. Henderson.

(D) Counsel's failure to request that the closing arguments of District Attorney and his own arguments concerning punishment; aggravating and mitigating circumstances be transcribed for appeal review by the Georgia Supreme Court.

There is no request in the trial transcript by petitioner's attorney to have any of the closing arguments transcribed. In Harris v. State, 237 Ga. 718, 726-27 (1976), Cert. Den. ___ U.S. ___ 97 Sup. Ct., 2642, 53 L.Ed.2d 251 (1977), " . . . If counsel wants the final arguments recorded it is his duty to see that it is done in as much as it is not required by statute . . . Counsel

cannot sit by and permit some matter they could correct by timely action and later claim error.

Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical consideration as well as specialized knowledge of the law. Brady v. U.S., 756 757, 25 L.Ed.2d.

Surely counsel specialized knowledge of the law means the Code of Georgia statutes dealing with trial court procedures in death cases as as: Georgia Code Ann. Section 6-805 and Section 27-2401 address the procedure for the preparation of a record for appeal." . . . the court reporter shall exactly and truely record, or take stenographic notes of, the testimony and proceeding in the case, except the argument of counsel." Ga. Code Ann. Section 27-2401 (Emphasis supplied).

Since petitioner's attorney set forth all of his mitigating circumstances in the closing argument for the express purpose that the reviewing court can consider them, and the ruling judge to consider them, for the mercy of the court, counsel faithful representation in the interest of his client, has as his contingency plans were in the case at the Bar.

In the Habeas Corpus Hearing, T-38, 39;

Q. Okay, now, did you ever, prior to the pronunciation of the, the pronouncement, I guess is the word, of the sentence did you, do you recall having any discussions with Mr. Moore on contingency plans, in the event the death sentence was imposed.

A. Well, the discussions we had were that we were going to take our chance with the judge, as opposed to a 12 man jury and that we were going to remain with this decision for, for appellate purposes. We felt that we would have a better chance or I did. I was consulting with Billy and explaining to him how I felt. That with one man imposing the sentence as opposed to 12 persons imposing the sentence, we'd have a better chance on appeal even if the judge in this instance, did give the death penalty.

This clearly set forth that there is no actual basis to consider this faithful representation of the interest of petitioner nor showing the specialized knowledge of the law.

(E) Unconstitutional cases used in the Direct Review by the Georgia Supreme Court in comparison of the Death Sentence.

In Furman v. Georgia the United States Supreme Court ruled that Georgia Death Penalty statutes were unconstitutional, under the George Code Ann. Title 26 on criminal Procedures, the court procedures contain only one phase of trial proceeding were the judge and/or juries determine the guilt and sentence all in one phase. This death penalty statute set forth no consideration for mitigating circumstances, which is a vital element in this phase, of pre-sentencing to deal with evidence for punishment.

All death penalty cases were overturned from 1972 and Backwards and these were some of the cases Lingo

v. State, 226 Ga. 496, 175 S.E.2d 657 (1970); Johnson v. State, 226 Ga. 511, 175 S.E.2d 779 (1971); Pass v. State, 227 Ga. 730, 182 S.E.2d 779, (1971); Watson v. State, 229 Ga. 787, 194 S.E.2d 407 (1972). Nevertheless they were used to compare to the petitioner's case.

Now according to the new death penalty ruling and statute in Gregg v. Georgia. The statute in the sentencing procedure "27-2534" Law. Ga. L. 1974, PP. 352, 357 will permit judges and juries to determine whether any mitigating and aggravating circumstances exist, and whether to recommend mercy for the defendant.

Now according to this statute and Gregg v. Georgia ruling the above cases are still unconstitutional and truly unfit for comparison to present day death penalty cases, because of the different trial proceeding and laws of the Georgia Code Ann. Title 27-2534.1.

How can the state Supreme Court compare the two different death penalty statutes and cases, where one is unconstitutional, and has been wantonly and freakishly imposed. To use the above cases to uphold the present law. There is no legal way to compare the sentencing phase of the trial, where mitigating or aggravating circumstances are brought out, because those trials and transcripts have not been recorded, and the basic direct review of the state Supreme Court is different on this count.

Nevertheless, it's the court's duty to view similar cases. Now if the cases are unconstitutional could they be similar. And the evidence compared from a legal stand point of law. Unequivolally (sic), death cases are different both in degree, and kind from all other cases.

The above are not death cases any more nor are they legal or constitutional death cases according to Furnam v. Georgia and Gregg v. Georgia, death cases require special scruting (sic) to determine that both guilt and sentence phase comply with Due Process of law.

Since the above cases do not meet the statutory provisions designed by the Georgia Legislature to meet the objections of Furman and Jackson, nor any of the pre-Furman cases, and it's the duty of the Georgia Supreme Court under the similarity standard to assure that no death sentence is affirmed unless in similar cases throughout the State the death penalty has been imposed generally. Then why are there no guilt pleas in comparsion. Two phase trial of guilt and sentencing, a Direct review to state Supreme Court to consider mitigating and aggravating circumstances.

CONCLUSION

This court should grant a amendment for Writ of Habeas Corpus and petitioner pray a hearing is heard in this case and remand it with directions that the sentence of death be set aside and a life sentence imposed or afford the petitioner any further relief that justice requires.

/s/ William N. Moore
William Neal Moore
Petitioner Pro se

CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of March, 1979 I mailed first class a copy of the attached Amendment to Writ of Habeas Corpus, with copies to Attorney General Arthur K. Bolton and Assistant Attorney General John

Dunsmore, 132 State Judicial Building, 40 Capitol Square, S.W., Atlanta, Georgia 30334.

/s/ William N. Moore
William Neal Moore
Petitioner Pro se
P.O. Box 70234 - 4th Floor
State Prison
Reidsville, GA 30453

Prisoner's Name: WILLIAM NEAL MOORE

Prison Number: D-103403

Place of Confinement: Georgia Diagnostic and Classification Center, Jackson, Georgia.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

WILLIAM NEAL MOORE, Petitioner,
vs.
WALTER D. ZANT, Warden, Respondent.
Civ. Action No.

~~AMENDED~~ PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(1) The name and location of the court which entered the judgment of conviction and sentence under attack are:

The Superior Court of Jefferson County,
Jefferson County Georgia.

(2) The date of the judgment of conviction and sentence is July 17, 1974.

(3) The sentence is that petitioner be put to death by electrocution.

(4) The nature of the offense involved is that the petitioner was convicted of the offense of murder while engaged in the commission of another capital felony, to wit, armed robbery, in violation of Ga. Code Ann. §27-2534.1(b)(2).

(5) The petitioner entered a plea of guilty to the offense charged.

(6) There was no trial as to the issue of guilt or innocence. The sentencing hearing was had before the court without intervention of a jury.

(7) The petitioner made statements to the court during the entry of the guilty plea, and the petitioner testified during the sentencing hearing before the court.

(8) The petitioner appealed his conviction and sentence of death.

PROCEDURAL HISTORY

(9) The facts of the petitioner's appeal are as follows:

(a) The Supreme Court of Georgia affirmed the petitioner's conviction and sentence in a *per curiam* opinion, with one justice dissenting, on February 12, 1975; on March 4, 1975, that Court denied a timely petition for rehearing. *Moore v. State*, 233 Ga. 861, 213 S.E.2d 829 (1975).

(b) On July 6, 1976, the Supreme Court of the United States denied a timely petition for a writ of certiorari. *Moore v. Georgia*, 428 U.S. 910 (1976). (Justices Brennan and Marshall were of the opinion that certiorari should be granted.) On October 4, 1976, the Supreme Court denied a timely petition for rehearing. *Moore v. Georgia*, 429 U.S. 873 (1976).

(10) Other than the appeal described in paragraphs 8 and 9 above, the only petitions, applications, motions, or proceedings filed or maintained by the petitioner with respect to the 1974 conviction and sentence

of the Superior Court of Jefferson County are those described in paragraph 11 below.

(11) (a) On October 18, 1976, the petitioner filed an action for a declaratory judgment in the Jefferson County Superior Court seeking a new sentencing proceeding. Relief was denied without a hearing, and that order was affirmed by the Georgia Supreme Court. *Moore v. State*, 239 Ga. 67, 235 S.E.2d (1977). On October 3, 1977, the Supreme Court of the United States denied a timely petition for writ of certiorari. 434 U.S. 878 (1977).

(b) On January 6, 1978, the petitioner filed a motion to withdraw the plea of guilty. The motion was denied without a hearing, and the appeal was not perfected when the Supreme Court of Georgia declined to grant a stay of execution.

(c) In January of 1978, James C. Bonner, then counsel for the petitioner, filed a petition for writ of habeas corpus in the Superior Court of Tattnall County; a hearing was held on March 30, 1978, and on July 13, 1978, the court denied all relief sought. On October 17, 1978, the Supreme Court of Georgia denied an application for a certificate of probable cause to appeal from the denial of habeas relief by the trial court.

(d) On August 18, 1978, James C. Bonner, then counsel for the petitioner, filed a petition for writ of habeas corpus and application for stay of execution in the United States District Court for the Southern District of Georgia. *Moore v. Balkcom*, Civ. No. 78-224. That action was voluntarily dismissed without prejudice on August 28, 1978, after the Supreme Court of

Georgia granted petitioner a stay of execution. Subsequently, petitioner's execution date was set for December 4, 1978.

(e) On November 22, 1978, counsel for petitioner refiled a petition for writ of habeas corpus (Appendix C)* and application for stay of execution before the United States District Court for the Southern District of Georgia. The stay was granted. On March 6, 1979, petitioner Billy Moore himself filed a *pro se* amendment to the petition for writ of habeas corpus adding additional grounds for relief. (Appendix D)* The United States Magistrate held a hearing on the original petition on June 18, 1979.

(f) On September 15, 1980, respondent filed a motion for final disposition in this matter.

(g) On September 30, 1980, petitioner retained H. Diana Hicks of Nashville, Tennessee to serve as his counsel without compensation, and dismissed James C. Bonner.

(h) On October 1, 1980, Hicks moved to file an amended petition for habeas corpus to supplant the original petition and the *pro se* amendments. (Appendix E)* The amended petition did not raise ineffective assistance of counsel but did raise additional claims for which state remedies had been exhausted. Counsel requested an evidentiary hearing on the amended petition. Counsel also filed a Memorandum in Opposition to Respondent's Motion for Final Disposition.

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* Handwritten entries also reproduced typographically.

(i) In January of 1981, Ms. Hicks informed petitioner that she was leaving her position with the Southern Prisoners Defense Committee in Nashville, Tennessee and reentering private practice in another state and could not continue to represent him. She exchanged many letters with petitioner regarding her move and the need for new counsel to enter the case. On April 8, 1981, petitioner met with Mr. Givelber and retained him to represent him in this matter.

(j) On April 29, 1981, this Court granted petitioner habeas corpus relief from his sentence of death while denying him relief from his conviction. This Court also denied leave to file both the April 6, 1979 and October 1, 1980 amendments to the petition for habeas corpus.

(k) On June 23, 1983, the United States Court of Appeals for the Eleventh Circuit affirmed the grant of relief as to petitioner's sentence. *Moore v. Balkcom*, 709 F.2d 1353 (11th Cir. 1983). On September 30, 1983, the Court withdrew its earlier opinion and denied relief as to petitioner's sentence. 722 F.2d 629 (11th Cir. 1983).

(l) On December 13, 1983, the Court of Appeals denied petitioner's motion for rehearing and suggestion for rehearing en banc. 722 F.2d 629 (11th Cir. 1983).

(m) On March 5, 1984, the United States Supreme Court denied the petition for writ of certiorari. *Moore v. Balkcom*, ___ U.S. ___, 79 L.Ed.2d 773 (1984).

(n) On May 8, 1984, the Superior Court of Jefferson County denied petitioner's request for leave to appear before the court, and set May 24, 1984 as an execution date.

(o) On May 11, 1984, petitioner filed a habeas corpus petition (App F) with the Superior Court of Butts County which denied it on May 17, 1984. The Georgia Supreme Court denied relief.*

STATEMENT RESPECTING RULE 9(b)

(12) The present petition presents nine new and different grounds for relief, none of which have been previously adjudicated on their merits by this Court. Four of these claims are put forward in the present petition, and not previously, because they depend upon changes in law announced only subsequent to the filing of petitioner's state and federal habeas corpus petitions in 1978. A fifth claim depends on the independent development, since 1978, of facts that make out a constitutional violation. Three claims were presented to this Court by petitioner's former attorney Diana Hicks, in her October 1, 1980 proposed amendment to the petition. The Court, in its discretion, did not permit amendment of the petition to include these claims – since it granted relief on other grounds – and thus it never addressed or decided the merits of any of these claims. The ninth claim was not present previously because of conflicts between petitioner and his state

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* Handwritten entries also reproduced typographically.

habeas corpus counsel, and because of the unfamiliarity of that counsel with relevant facts and legal principles. Each of these claims will be addressed in turn.

(13) The *Estelle v. Smith* claim, ¶¶ 26-31 *infra*, depends upon legal principles first announced by the Supreme Court in *Estelle v. Smith*, 451 U.S. 454 (1981) on May 18, 1981, nearly three years after petitioner's federal habeas corpus petition was filed.

(14) The *Lockett v. Ohio* and *Eddings v. Oklahoma* claim, ¶¶ 32-38 *infra*, depends upon legal principles first adverted to in *Lockett v. Ohio*, 438 U.S. 586 (1978) on July 3, 1978, seven months after petitioner's state habeas corpus proceedings were begun, and just 10 days before the state habeas court denied relief. Those principles were not full developed until the Supreme Court's decision in *Eddings v. Oklahoma*, 455 U.S. 104 (1982) on January 19, 1982.

(15) The *Proffitt v. Wainwright* claim, ¶¶ 43-44 *infra*, depends upon legal principles first announced by the Court of Appeals in *Proffitt v. Wainwright*, 685 F.2d 1227 (1982), reh. denied, 706 F.2d 311 (11th Cir. 1983), which was decided on September 10, 1982.

(16) The *Zant v. Stephens* claim, ¶¶ 45-46 *infra*, depends upon law that was only fully developed in *Zant v. Stephens*, ___ U.S. ___, 77 L.Ed.2d 235 (1983), announced on June 22, 1983.

(17) The *Enmund v. Florida* claim, ¶¶ 47-49 *infra*, depends upon a legal principle first announced by the

Supreme Court in *Enmund v. Florida*, 458 U.S. 782 (1982) on July 3, 1982.

(18) The *McCleskey v. Zant* claim, ¶¶ 50-56 *infra*, depends upon social scientific evidence that was developed by researchers working independently of petitioner Moore during the period from 1979 to 1983; it was unavailable to him as an indigent in 1978 at the time of his initial state and federal habeas corpus proceedings. The evidence was first presented in any state or federal court in any form only in June of 1982.

(19) Three of the claims, see ¶¶ 39-42, 71-76 *infra*, were presented by petitioner to this Court in the October 1, 1980 proposed amendment, while the federal petition was still in this Court.

(20) Despite requests from petitioner, Bonner refused to raise the claim in state habeas corpus proceedings that petitioner's initial counsel, Hinton Pierce, rendered ineffective assistance in the advice rendered to and representation provided for petitoner. Mr. Bonner was unaware that petitioner enjoyed an independent Sixth Amendment right to effective representation at the penalty phase of a capital case. His failure to raise the claim was attributable to his lack of awareness of this legal option. Moreover, the Prisoners' Legal Counseling Project with which Mr. Bonner was associated, lacked any resources with which to do any factual investigation. He conducted no factual inquiry of any kind into the adequacy of Mr. Pierce's investigation of the circumstances surrounding his representation of petitioner. Mr. Bonner did not inquire about the possible availability of witnesses from the community

in which the crime occurred, the army base at which petitioner was stationed, or people who knew petitoner and his circumstances, in order to determine whether evidence could have been presented sheddling light on the circumstances surrounding petitioner's crime, community sentiment regarding that crime, community attitudes toward petitioner, petitioner's military record or circumstances in petitioner's life which might have been considered in mitigation at petitioner's sentencing hearing. (See Bonner Affidavit, *infra*. Appendix I*)

(21) The state habeas court denied each of petitioner's claims and *sua sponte* determined that the advice rendered by Pierce as to whether petitioner should stand by his plea even in the event that he was sentenced to death constituted the effective assistance of counsel. The state habeas court also found that petitioner's counsel had been shown a copy of the presentence report.

(22) On March 12, 1979, Bonner filed a petition with this Court to be relieved of his obligation as lead counsel because he and his project could no longer effectively represent petitioner and could not assure that petitioner's right to collateral review would not be prejudiced.

(23) On April 6, prior to any hearing in this matter, petitioner filed a *pro se* amendment to his petition for habeas corpus raising, as additional grounds for relief, ineffective assistance of counsel in that Pierce:

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* Handwritten entries also reproduced typographically.

(a) failed to investigate and challenge the composition of the grand jury or to inform petitioner of this right; (b) failed to investigate prejudice in Jefferson County and seek a change of venue; and (c) failed to request that closing arguments be recorded. Petitioner also challenged the use of pre-*Furman* death cases for comparability review. Leave to amend was granted.

(24) On September 30, 1980, petitioner retained H. Diana Hicks of Nashville, Tennessee to serve as his counsel without compensation and dismissed James C. Bonner.

(25) On October 1, 1980, new volunteer counsel Hicks moved to file an amended petition for habeas corpus to supplant the original petition. The amended petition did not raise ineffective assistance of counsel only because it had not at that time been fully exhausted.

A. *The Estelle v. Smith Claim*

(26) The failure of the state to inform petitioner of his right to remain silent and of his right to counsel – or to secure any knowing and intelligent waiver of those rights – prior to interrogating him, while he was in custody, for purposes of gathering information relevant to sentencing, violated petitioner's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Facts Supporting Petitioner's Claim That He Was Advised Neither Of His Right To Remain Silent Nor Of His Right To Counsel Prior To Or During The Presentence Interview Conducted While He Was In Custody Awaiting Sentencing

(i) *The Fifth Amendment Claim*

(27) Following petitioner's guilty plea, and while he was incarcerated and awaiting sentence, petitioner was interrogated by J. Clark Rachels, Probation and Parole Supervisor, an employee of the State of Georgia. The purpose of the interrogation was to gather information for the use of the court in imposing sentence. The interrogation took place in the Jefferson County Jail in the absence of counsel. Petitioner was never informed that he had the right to remain silent and that the information he gave could be used to decide whether he should be sentenced to death.

(28) In 1981, the Supreme Court of the United States held that the Fifth Amendment protection against self-incrimination applies to the penalty phase of a capital trial. *Estelle v. Smith*, 451 U.S. 454 (1981). *Smith* makes clear that the Fifth Amendment right to remain silent and not to answer questions, and to counsel's assistance, is applicable to state investigations in preparation for a capital sentencing proceedings in the same manner as to investigations in preparation for a trial on guilt or innocence. Because petitioner Moore was never informed of his right to remain silent or to a lawyer's assistance, he was deprived of these rights secured by *Estelle v. Smith, supra*, which are fully retroactive. *Battie v. Estelle*, 655 F.2d 692, 696-99 (5th Cir. 1981). Moreover, since petitioner was not informed of these rights, he did not waive them. Petitioner's Affidavit setting forth these facts is annexed.

(29) The presentence report, based in part upon the unconstitutional interrogation, contained many

highly prejudicial errors and omissions, more fully set forth below. On information and belief, the sentencing court consulted the presentence report in determining the appropriate sentence and in preparing the sentencing court's report to the Georgia Supreme Court.

(ii) *The Sixth Amendment Claim*

(30) The failure to inform petitioner of his right to consult with counsel in preparation for and during the course of his custodial interrogation while awaiting sentencing, and the conduct of that interrogation in the absence of counsel, violated his rights under the Sixth and Fourteenth Amendments.

(31) The pre-sentence interrogation of petitioner described above occurred at a critical stage in the proceedings against him. The Supreme Court established in *Estelle v. Smith* that a capital defendant interviewed by a court-appointed official while awaiting sentencing has a separate, Sixth Amendment right to counsel. Petitioner was never informed of this right to consult with counsel prior to the interrogation or of his right to have counsel present. He was deprived of *Smith*'s guarantee. Because the presentence report, prepared on the basis of the interview, was pervaded with errors and inaccuracies, and because petitioner had no guilt trial, and therefore no opportunity fully to present the individual circumstances of his case to the Court, the denial of his right to the assistance of counsel was particularly prejudicial. Since he was not informed of these rights, petitioner did not intelligently and voluntarily waive them. *See* Petitioner's Affidavit, *infra*,

Appendix J*

B. *The Lockett v. Ohio and Eddings v. Oklahoma Claim*

(32) Petitioner's sentence was based on a presentence report which did not present the sentencer with an accurate picture of petitioner, his history, his current situation, his "criminal" record, or the circumstances of the crime. These pervasive errors deprived petitioner of his right, guaranteed by the Fifth, Eighth and Fourteenth Amendments, to be sentenced to death on the basis of accurate information, including information about his character and all relevant mitigating circumstances surrounding the crime.

Facts Supporting Petitioner's Claim That He Was Sentenced On The Basis Of Materially False and Misleading Information Contained In The Presentence Report

(33) The accurate information which *should* have been before Judge McMillan for purposes of sentencing, but which was obscured because of the errors that pervaded the report, is set forth in Appendix K.* The major omissions and materially false statements in the presentence report Appendix L* are noted below.

(34) The presentence report prominently displayed, under a heading "Record of Previous Offenses," ten separate crimes. Yet six of these were mere arrests, not involving adjudications of any kind. The four listed offenses which actually involved juvenile court

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* Handwritten entries also reproduced typographically.

adjudications were all imposed in proceedings in which petitioner had not been afforded either the right to counsel or the right to confrontation or cross-examination of witnesses. These adjudications were all unconstitutional under the landmark cases of *Gideon v. Wainwright*, 372 U.S. 335 (1963) and *In re Gault*, 387 U.S. 1 (1967). *See* Petitioner's Affidavit, *infra*.

(35) The presentence report also stated that petitioner had no marital problems and failed to suggest that he was suffering from any emotional stress prior to or during the crime. In fact, petitioner was suffering from severe marital and financial problems, and so advised the probation officer. *See* Petitioner's Affidavit, *infra*. Petitioner had been in great emotional turmoil and was in desperate need of funds immediately prior to his crime because his wife had refused to join him in Georgia and instead remained in Columbus, Ohio where she left him for another man and led a dissolute life. As a result she stopped providing any care whatsoever for petitioner's infant son and petitioner was forced to leave his hospital bed (where he was recuperating from surgery) to go to Columbus and get his child and bring him back to Georgia. Petitioner had been living on the base to save money since he had allotted the great bulk of his pay to his wife for the care of their child. However, petitioner's request to change the allotment was snarled in military bureaucracy with the result that he was without funds to care for his son. He was in the process of securing a $250 emergency loan from the Red Cross at Fort Gorden when he was arrested. None of this appears in the presentence report.

(36) The presentence report asserts that petitioner claimed that he and another man, the nephew of the victim, attempted to rob the victim on a number of occasions but "every time" the nephew got drunk, suggesting that the two had planned and attempted the robbery over a period of time. In fact, petitioner had never planned or attempted to rob the victim; it was a drunken, spontaneous act on the evening of the crime. As petitioner informed the probation officer, he was extremely drunk on the night of April 2, was led to the house by the nephew of the victim and returned later that same evening, when the crime occurred. *See* Petitioner's Affidavit, *infra*; Factual Background, *infra*.

(37) The presentence report also stated that petitioner first fired at the victim, who then fired back. However, every account of the crime given by petitioner reveals that he fired his pistol through a door into a dark room in a panicked and drunken *response* to an initial shotgun blast by the victim. *Id.*

(38) The presentence report was also prejudicial, incomplete and misleading on petitioner's military record. The "Community Attitudes" section of the report suggested that those who knew petitioner while at Fort Gordon had nothing either positive or negative to say about him. This was false and misleading, since many people at Fort Gordon could and would have attested to petitioner's good character and had requested the investigator to contact them. Petitioner's Affidavit, *infra*; Factual Background, *infra*. Summarized in the Factual Background Appendix is the testimony on petitioner's character by petitioner's fellow soldiers at a proceeding to determine whether he should be dishonorably discharged. As that testimony

demonstrates, petitioner's military record was excellent. He was viewed as an "outstanding" soldier and a fine leader of men.

C. *The Gardner v. Florida Claim*

(39) The trial judge imposed the sentence of death based in part upon a pre-sentence report that neither petitioner nor his counsel had been afforded any meaningful opportunity to review, correct or supplement, in violation of petitioner's rights guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

Facts Supporting Petitioner's Claim That His Sentence Was Imposed Based Upon An Undisclosed Presentence Report

(40) After petitioner's guilty, plea, the trial court ordered a presentencing sentencing investigation to be conducted; pursuant to that order, the Department of Offender Rehabilitation Community-based Services prepared a Case Study concerning petitioner which was dated and submitted to the sentencing judge on July 17, 1974. The entire report, including enclosures, is seventy-two pages long; the first five pages are the Case Study prepared by the probation officer. The Case Study contains representations about petitioner as well as his supposed "Record of Previous Offenses."

(41) The presentence report was not disclosed to petitioner prior to sentencing.

(42) The presentence report was never disclosed to petitioner's counsel prior to sentencing under circumstances which made it possible for counsel or petitioner to undertake a constitutionally adequate review

of the material contained therein and to correct its errors and make up for its omissions. At most, it was shown to petitioner's counsel just prior to its introduction into evidence by the State on the day of the sentencing hearing, at a time when no careful examination, much less any out-of-court investigation, could have been undertaken.

D. *The Proffitt v. Wainwright Claim*

(43) The information concerning petitioner was contained in a presentence report that was presented to the trial court in a written document rather than in open court, by witnesses under oath and subject to cross-examination, in violation of petitioner' rights to confrontation and cross-examination, guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments.

Facts Supporting Petitioner's Claim That He Was Deprived Of His Right To Confront Information and Witnesses Presented In The Presentence Report

(44) Under *Proffitt v. Wainwright*, 685 F.2d 1227 (11th Cir. 182), *mod.* 706 F.2d 311 (1983), *cert. denied*, ___ U.S. ___, a capital defendant has the specific right to confront witnesses whose statements, whether in court or out of court, are used against him. *Id.* at 1254. The false and misleading information which was contained in the presentence report was not represented in open court, by witnesses under oath and subject to cross-examination. This deprived petitioner of notice of the nature of the information, the opportunity to challange it, by the cross-examination of witnesses under oath, and of the opportunity to supplement and correct the incomplete and false picture it presented. The

deprivation of petitioner's vital Sixth Amendment rights to confrontation and cross-examination compounded the unconstitutional inaccuracies in the presentence report itself. Had petitioner been given an adequate opportunity to confront the witnesses relied upon in the report itself, he could have corrected the misimpressions about his financial, military and marital circumstances, clarified the circumstances of the crime, and presented the truth about his prior juvenile record. *See* Factual Background, *infra*.

E. *The Zant v. Stephens Claim*

(45) The errors and omissions contained in the presentence report and which were repeated in the report of the trial court deprived petitioner of his Eighth and Fourteenth Amendment right to accurate and meaningful appellate review.

Facts Supporting Petitioner's Claim That He Was Denied A Meaningful Appellate Review Of His Death Sentence

(46) The errors and omissions contained in the presentence report were transmitted to the Georgia Supreme Court as part of the record of this case. Some (particularly regarding his prior record) were repeated in the report of the trial court. The efforts of the Georgia Supreme Court to conduct its independent and meaningful appellate review were therefore hindered by a lack of complete and accurate information concerning petitioner. Petitioner was therefore denied his right, guaranteed by *Zant v. Stephens*, ___ U.S. ___, 103 S.Ct. 2733 (1983), to a meaningful appellate review,

based on accurate information, of his death sentence. *See Zant v. Stephens*, 456 U.S. 410, 413 (1982).

F. *The Enmund v. Florida Claim*

(47) Petitioner's death sentence is excessive and disproportionate under the Eighth and Fourteenth Amendments, since it was imposed despite his repeated and uncontradicted denial of any intent to kill the victim.

Facts Supporting Petitioner's Claim That His Offense Does Not Involve Intentional Killing

(48) Petitioner repeatedly denied that he had any intent to kill the victim. He told the police, and repeated in open court, that he fired only after the victim fired first, and that he fired out of a combination of fright and intoxication, not out of calculation or malice.

(49) Nothing in the record contradicted petitioner's statement. It was consistent with the physical evidence which showed that a shotgun blast had been fired in petitioner's direction. It was consistent with the police investigation which showed that petitioner had been drinking. Petitioner consistently told the same story from arrest through the sentencing hearing. The imposition of the death penalty in his violates the "fundamental" requirement "that causing harm intentionally must be punished more severely than causing the same harm unintentionally." *Enmund v. Florida*, 458 U.S. 782, 798 (1982).

G. *The McCleskey v. Zant Claim*

(50) Petitioner is an indigent black man convicted of the murder of a black male. He was sentenced to die

and will be executed arbitrarily pursuant to a pattern and practice of Georgia prosecuting authorities, courts, juries, and Governors to discriminate - on grounds of race of both the victim and the defendant - in the administration of capital punishment, in violation of petitioner's rights secured by the Eighth Amendment and by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. These issues are currently pending before the United States Court of Appeals, in *Spencer v. Zant*, 715 F.2d 1562, *vacated for rehearing en banc*, 715 F.2d 1583 (1983); *McCleskey v. Zant*, No. 84-8176 (to be argued June, 1984) and *Ross v. Hopper*, 716 F.2d 1528 (11th Cir. 1983), *vacated for rehearing en banc*, 729 F.2d 1293 (11th Cir. 1984).

Facts Supporting Petitioner's Claim Of Arbitrariness and Racial Discrimination

(51) Petitioner is an indigent black man. At the time of his 1978 habeas hearing, petitioner did not have available the type of social scientific evidence on arbitrariness and racial discrimination in the administration of the death penalty in Georgia, and in Jefferson County, where he was sentenced, which is now available to him. Because petitioner is indigent, he has been forced throughout to rely upon the volunteer services of his lawyers and upon empirical evidence devloped by social scientists working independently of his particular case.

(52) Subsequent to petitioner's prior habeas proceeding, two empirical studies were conducted from 1979 through 1982 considering the question of whether

the substantial racial disparities observed in Georgia's capital sentencing system persist even when a host of legally valid and relevant factors are taken into account: the Procedural Reform Study and the Charging and Sentencing Study. These two empirical studies were conducted by Professor David Baldus and his colleagues.

(53) In August, 1983, and in October, 1983, evidentiary hearings on these empirical studies were conducted by the United States District Court for the Northern District of Georgia, in McCleskey v. Zant, No. 81-2434A (N.D. Ga.)

(54) In those evidentiary hearings held in *McCleskey V. Zant,* the studies and conclusions of Professor Baldus and his associates were introduced into evidence. These expert witnesses concluded that significant racial desparties persist even if one controls for the presence or absence of Georgia's statutory aggravating circumstances.The disparities based upon the race of the victim remain strong when a host of other legitimate aggravating and mitigating factors are taken into account, and even when the focus of the study is narrowed from the universe of cases of indictments for murder to those cases in which a murder conviction is obtained, or those in which a penalty trial is held.

(55) On February 2, 1984, the District Court in *McCleskey v. Zant,* entered a final order in which it rejected these contentions regarding the arbitrariness and racial discrimination of the administration of Georgia's death penalty scheme. *McCleskey v. Zant,* 580 F. Supp. 338 (N.D. Ga. 1984). By order of the Eleventh

Circuit Court of Appeals entered on March 28, 1984, that Court on its own motion determined to hear the *McCleskey* appeal *en banc* without any prior consideration of the appeal by a panel of that Court. A copy of the *en banc* brief submitted in that case is attached as Appendix G. The Eleventh Circuit Court will hear oral argument, *en banc,* on June 12, 1984.

(56) Petitioner alleges and adopts the documentary testimonial evidence set forward in *McClesky v. Zant*. Moreover, he alleges that racial discrimination in capital sentencing is part of a pattern of racial discrimination that characterized Jefferson County, Georgia until the recent past. This racial discrimination affected many areas of the public life in Jefferson County, including education, housing, employment, voting and the criminal justice system. Petitioner's death sentence was imposed pursuant to a pattern of intention racial discrimination in Jefferson County and the Middle Judicial Circuit.

H. *Petitioner's Ineffective Assistance At Sentencing Claim*

(57) Trial counsel's (i) failure adequately to investigate and present to the trial court possible mitigating defenses and evidence, including details of petitioner's childhood, his juvenile record, his military record, and the circumstances of the crime which were readily available to him upon investigation and (ii) failure to obtain or review, the presentence report upon which the State based its sentencing case, or to correct its many

detrimental errors and misstatements and (iii) his failure otherwise to afford effective representation to petitioner at the sentencing phase of his capital trial, violated petitioner's right to effective assistance of counsel under the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts Supporting Petitioner's Claim That He Was Deprived Of The Effective Assistance Of Counsel

(58) Petitioner's attorney, Mr. Hinton Pierce (hereafter "Pierce") was retained shortly after petitioner's arrest. On April 8, 1974, four days after petitioner's arrest, Pierce wrote to the District Attorney for Jefferson County offering to plead petitioner guilty. Although the District Attorney insisted that he was going to seek the penalty of death, petitioner's attorney nonetheless advised petitioner to plead guilty and to stand by his guilty plea in the event that the judge imposed the sentence of death.

(59) On information and belief, Mr. Pierce conducted no investigation whatsoever beyond speaking with petitioner and reading a copy of his confession. Although he knew petitioner had been drinking steadily for a number of hours prior to the killing, and although intoxication can negate the specific intent required for robbery and malice murder, Mr. Pierce spoke with no one who had been with petitioner prior to the murder nor with George Curtis, the nephew of the victim who had suggested and attempted to execute the crime. He failed to do so although the police had spoken

with all these people and their names would have been available to counsel.

(60) Mr. Pierce did not file a motion to suppress the evidence seized from Moore's home or Moore's confession although (1) the warrant for petitioner's arrest was invalid on its face under *Giordenello v. United States,* 357 U.S. 480 (1958), since neither it nor the affidavit supporting it set forth facts which would permit a magistrate to conclude that probable cause existed; (2) the warrant was also invalid under *Connally v. Georgia,* 429 U.S. 245 (1977), since the justice of the peace who issued it was compensated only when she issued warrants and not otherwise; 93) both Georgia Law 27 Ga. Code Ann. 205, 207 and the United States Constitution, *Payton v. New York,* 445 U.S. 573 (1980), demand a valid warrant before an arrest can occur, as this one did, in a person's home; (4) in any event, the police lacked probable cause to arrest petitioner since the only source of information about petitioner was George Curtis, himself a suspect who fit the description of a man seen near the victim's home, and Curtis could only inform the police that petitioner was in Wrens on the evening of the killing but did not assert that he knew that petitioner had committed the crime; (5) given the illegality of petitioner's arrest, both the consent to search and waiver of petitioner's Fifth Amendment rights attributed to petitioner were invalid as fruits of the poisonous tree under *Wong Sun v. United States,* 371 U.S. 471 (1963). Mr. Pierce did not secure petitioner's consent for his decision to forego petitioner's Fourth and Fifth Amendment challenges.

(61) On information and belief, although Mr. Pierce believed that the community was so inflamed by a recent murder the petitioner stood "no chance" with a jury, Mr. Pierce neither: (1) moved for a change of venue for petitioner's trial, nor (2) sought a continuance for petitioner's sentencing, nor (3) asked the judge to recuse himself in favor of a judge from another county who would be less likely to be influenced by the passions exant in Jefferson County, nor (4) challenged the grand jury for possible bias in light of the inflamed community sentiment. Mr. Pierce neither explained any of these options to petitioner nor sought his agreement to forego such motions.

(62) Although Mr. Pierce knew or should have known that grand juries were selected in Jefferson County in a manner that discriminated against blacks, women, poor people and young people, on information and belief Mr. Pierce neither investigated the possibility of a challenge to the composition of the grand jury nor mounted such a challenge. Mr. Pierce neither explained to petitioner his right to a constitutionally selected grand jury nor did he secure petitioner's consent for foregoing an attack on the grand jury.

(63) On information and belief, although Mr. Pierce asserted that filing the pre-trial motions available to petitioner might make the law enforcement authorities and District Attorney "mad" at him and petitioner, he did not explain how their anger could lead them to do any worse than ask for the death penalty, a course to which the District Attorney was already committed. Mr. Pierce did not explain to petitioner that filing the various motions described above

might result in either the suppression of the evidence and convession which incriminated petitioner or provide the District Attorney with an incentive to plea bargain in return for petitioner's not filing the motions or withdrawing them once filed.

(64) Following petitioner's plea of guilty, Mr. Pierce failed to conduct a basic, minimum investigation or to prepare an adequate sentencing defense. On information and belief, Mr. Pierce new that petitioner had recently been under extreme emotional stress. Letters from family friends suggested that petitioner must have been under great stress to commit the crime charged. Petitioner's sister informed Pierce that people who knew petitioner at Fort Gordon were upset greatly by the news of petitioner's arrest and expressed disbelief. Petitioner had just been released after a long confinement in a military hospital; he was separated from his wife and was trying to provide for his three year old child, alone, and without any income (his military pay was being sent directly to his wife). However, on information and belief, Mr. Pierce made no effort to interview either pertitioner's (sic) estranged wife, the people who knew petitioner at the base, or the hospital staff who had treated petitioner. Nor did Pierce request that petitioner be given a psychiatric examination.

(65) Mr. Pierce took no role in developing evidence in mitigation beyond transmitting letters from family friends to the Probation Officer. On information and belief, he did not transmit two vital letters; one, from petitioner's sister which set forth petitioner's domestic troubles and another, from petitioner's physician,

which spoke very favorably about petitioner's character. If he did transmit the letters, he never insured that they came to the attention of the court as they were not contained in the presentence report.

(66) Assuming that he was, in fact, shown the presentence report prior to sentencing, on information and belief Mr. Pierce did not examine a copy of the presentence report nor did he show it to petitioner. As a result, none of the errors or omissions were corrected and petitioner was sentenced based on information which he had no opportunity to confront and which contained material inaccuracies.

(67) Mr. Pierce failed to prepare any of the witnesses who testified on petitioner's behalf at the sentencing hearing. Nor did he ask any of them a single question. Pierce failed to secure any witnesses other than petitioner's family to testify. Although Mr. Pierce was aware of mitigating circumstances, he failed to develop these circumstances by asking either petitioner or his family a single question concerning them. Moreover, he failed to clarity petitioner's ambiguous statement thus leaving it open to the false interpretation that petitioner had planned to kill Stapleton. Although petitioner testified that he was intoxicated when he entered Stapleton's house, Mr. Pierce failed to determine on direct examination how much petitioner had had to drink, or his level of intoxication.

(68) Although Pierce submitted to the probation officer a letter from a family friend alleging that petitioner's father had been in a hospital for the criminally

insane, and although the judge specifically asked petitioner's brother about this, Pierce made no effort to correct, clarify or rely upon this point.

(69) Mr. Pierce failed to preserve petitioner's rights for appeal from his death sentence in the following ways: (i) he failed to challenge the admissibility of the evidence or confession or the composition of the grand jury; (ii) he failed to object to or correct the inaccuracies contained in the pre-sentencing report either at the sentencing hearing or by a supplemental memorandum; (iii) and he failed to object to the District Attorney's final argument or ask that it be recorded.

(70) The trial judge was required to complete a report identifying the aggravating and mitigating circumstances for use by the Georgia Supreme Court in the mandatory review of the death sentence. The trial judge's report in the instant case was inaccurate and incomplete, reflecting the pre-sentence report upon which it and the sentence was based. Although the trial judge sent a copy of the report to Mr. Pierce, he failed to object to the inaccuracies or request that the report be corrected.

I. *The Imposition of Petitioner's Death Sentence*

(71) Petitioner's sentence of death was imposed by a trial court that took less than full responsibility for its sentencing decision, explicitly relying on the prospect of appellate review or Supreme Court invalidation of Georgia's capital statutes, in violation of petitioner's rights under the Eighth and Fourteenth Amendments.

Facts Supporting Petitioner's Claim Concerning The Trial Court's Imposition Of Sentence

(72) The trial court took less than full responsibility for his sentencing decision, and attached diminished consequences to the sentence of death that he imposed, because he believed, first, that the Supreme Court of Georgia would review his sentence with an eye to "even handed justice" and second, that the United States Supreme Court would find that Georgia's new death penalty statute was unconstitutional, preventing the petitioner's execution.

(73) During the presentence hearing, the court expressedly stated:

> The law provides, however, that in all death penalty cases, the case is automatically appealed to the Supreme Court of Georgia, and of course this case will be . . . they will apply "even handed justice" to your case with other cases that have happened in Georgia. Now I can't make that determination. The law does not place that discretion in me. It places that discretion solely within the jurisdiction of the Supreme Court of Georgia. As to whether or not that applies in your case is for them to decide. (Tr. T. 55-56.)

(74) The court also stated:

> You do have the hope that the Supreme Court of Georgia will reduce this to life imprisonment, and there is the hope that the Supreme Court of the United States will void all electrocution cases, but it is not for me to say. . . . I doubt's as to whether an execution will ever take place in this country again. (Tr. T. 58.)

J. *The Trial Judge's Erroneous Report*

(75) The sentence against the petitioner is unconstitutional because the trial judge's report contained incomplete and inaccurate information, which was not based on the evidence, in violation of the Eighth and Fourteenth Amendments and thus precluded the meaningful and effective appellate review required by the Eighth Amendment.

Facts Supporting Petitioner's Claim That The Trial Judge's Report Was Inaccurate, Precluding Constitutionally Required Appellate Review

(76) The trial judge is required to complete a form ("Report of Trial Judge") to indicate the aggravating and mitigating circumstances to the Georgia Supreme Court. The trial judge's report in the instant case was incomplete and inaccurate. Among other errors:

(i) The judge stated that "[t]he crime had been planned well in advance of the time committed: and, on another occasion the defendant had entered the house of the deceased and was not completed. The defendant returned again on the date that the robbery and murder occurred. In other words, this crime had been planned for sometime prior to its execution."

The evidence did not show that the crime had been planned well in advance of its execution; to the contrary, petitioner testified that the robbery was planned the evening it took place.

Although the report implied that petitioner's previous trip to Stapleton's house occurred on a different date, petitioner's testimony indicated that the first

break-in occurred only a few hours before the crime was committed. Only the inaccurate presentence report supported the judge's view.

(ii) The form specifically identified seven possible mitigating circumstances. The judge failed to indicate that there was evidence of three of these mitigating circumstances: (1) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, (2) the murder was committed under circumstances which the defendant believed to provide a moral justiciation or extenuation for his conduct, (3) at the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law was impaired as a result of intoxication.

(iii) The form requested that other mitigating factors be identified. The judge failed to indicate that there was evidence that Stapleton fired the first shot, and that petitioner had not intended to kill Stapleton but got frightened and fired back.

The Georgia Supreme Court was unable to compare this case in a meaningful way to any other case, or to determine whether the sentence was arbitrary, because of the inaccuracies contained in the trial judge's report.

(77) Each of the grounds listed in paragraphs (26) through (76) has been presented to the Georgia courts, and each has been rejected by the Georgia courts.

(78) There are no petitions or appeals pending presently in any state or federal court relating to the judgment and sentence under attack.

(79) William Neal Moore was represented by the following attorney:

(i) At trial and on appeal to the Supreme Court of Georgia, by Hinton R. Pierce, Augusta, Georgia;

(ii) on petition for certiorari to the Supreme Court of the United States, by Hinton R. Pierce;

(iii) on the motion for a declaratory judgment (and the appeal from denial of that motion), and on the motion to withdraw the plea of guilty, by Hinton R. Pierce;

(iv) on the state habeas corpus petition in the Superior Court of Jefferson County, by James C. Bonner, Jr., Athens, Georgia;

(v) on the initial federal habeas corpus petition, by James C. Bonner, Jr., Athens, Georgia;

(vi) on the effort to amend the original federal habeas corpus petition by H. Diana Hicks of Nashville, Tennessee;

(vii) on appeal from this Court's judgment of habeas corpus relief to the United States Circuit Court of Appeals for the Eleventh Circuit by Daniel Givelber and Donald Berman of Boston, Massachusetts;

(viii) on petition for certiorari to the Supreme Court of the United States, by Daniel Givelber and Donald Berman;

(ix) on petition for habeas corpus relief to the Superior Court of Butts County, by Tony L. Axam of Atlanta, Georgia, Daniel Givelber and Donald Berman.

(80) Hinton R. Pierce was retained by petitioner's family to represent petitioner at trial. Mr. Pierce was court-appointed to represent the petitioner on appeal on the basis of findings that the petitioner was indigent and unable to pay private attorneys any longer. Daniel Givelber and Donald Berman were appointed to represent petitioner before the United States Court of Appeals under the provisions of the Criminal Justice Act because petitioner was indigent and without funds to retain a lawyer. The other attorneys have represented petitioner without any compensation.

(81) On the judgment of July 17, 1974, that is challenged in this proceeding, the petitioner was sentenced on two counts of one indictment, and only on one indictment, in the same court, at the same time.

(82) The petitioner has no sentence to serve other than the sentence of death which is challenged herein.

WHEREFORE, the petitioner William Neal Moore prays that this Court:

1. Issue a writ of habeas corpus to have petitioner brought before it to the end that he may be discharged from unconstitutional confinement and restraint and/or relieved of the unconstitutional sentence of death;

2. conduct a hearing at which proof may be offered concerning the allegations of this petition;

3. permit the petitioner, who is indigent, to proceed without prepayment of costs or fees;

4. grant the petitioner, who is indigent, sufficient funds to secure expert testimony necessary to prove the facts as alleged in this petition;

5. grant the petitioner the authority to obtain subpoenas *in forma pauperis* for witnesses and documents necessary to prove the facts as alleged in this petition;

6. allow the petitioner a period of sixty days, which period shall commence after the completion of any hearing this Court determines to conduct, in which to brief the issues of law raised by this petition;

7. stay the petitioners execution pending final disposition; and

8. grant such other relief as may be appropriate.

Respectfully submitted,

TONY L. AXAM
175 Trinity Avenue, S.W.
Atlanta, George 30303

DANIEL J. GIVELBER
Northeastern University
School of Law
400 Huntington Avenue
Boston, Massachusetts 02115

ATTORNEYS FOR PETITIONER

By: /s/

VERIFICATION

I hereby verify that I am one of the attorneys for petitioner and that, to the best of my knowledge and information under penalty of perjury that all of the allegations in this petition are true and correct. Petitioner is not immediately available to sign a verification; in view of the imminence of his impending execution, I am completing this verification on his behalf.

/s/
DANIEL P. GIVELBER

CERTIFICATE OF SERVICE

I certify hereby that on this ___ day of May, 1984, I served a copy of the foregoing AMENDED PETITION upon Susan Boleyn, Esq., 132 State Judicial Building, Atlanta, Georgia, 30334, who is the attorney for the respondent, by depositing same in the United States mail, properly addressed and postage prepaid.

/s/

APPENDIX I

COUNTY OF DEKALB
STATE OF GEORGIA

AFFIDAVIT

James C. Bonner, Jr., being duly sworn, states that:

(1) I am a member in good standing of the State Bar of Georgia. I make this affidavit for submission in state and federal successor habeas corpus proceedings in the case of *William Neal Moore* v. *Charles Balkcom*.

(2) In January, 1978, when Mr. Moore's first state habeas petition was filed in the Superior Court of Tattnall County, State of Georgia, I was a lawyer with the Georgia Prisoner Legal Counseling Project with a docket of approximately one hundred and fifty (150) cases, of which Mr. Moore's case was one.

(3) I prepared Mr. Moore's first petition raising several constitutional claims for post-conviction review based upon the evidence I had available. None of these claims addressed the effectiveness of Mr. Moore's counsel during Moore's sentencing trial. Indeed, since Mr. Moore had been represented by retained counsel and had plead guilty, I assessed counsel's performance solely in light of the lenient standard set forth in the guilty plea cases following *McMann* v. *Richardson* and *Tollett* v. *Henderson*. During this period of time, I never considered whether the Sixth Amendment imposed any special or aditional requirements on counsel at the sentencing phase of a capital trial, and, thus, did not separately try to assess the adequacy of counsel's sentencing performance. More specifically, I did not reflect upon Mr. Moore's right to a full opportunity to present

the circumstances of his character, record, or of his offense as mitigating factors at his sentencing trial, nor examine the adequacy of counsel's conduct in securing that right. Not until well after *Lockett* v. *Ohio* was decided, and after Moore's original state habeas petition had been denied, did the role of mitigating evidence - and thus the duties of trial counsel to investigate that evidence - first become clear to me.

(4) Further, my office did not routinely engage in factual investigation for state post-conviction clients, and because I did not not understand the law to suggest that these matters would be relevant to any contitutional claim, I did not undertake an independent factual investigation of possible constitutional claims in Mr. Moore's case. Specifically, we did not contact members of the community where the crime occurred, any relatives of the victim, Mr. Moore's peers or supervisors in the military, his former civilian employers, school officials, juvenile case workers, family and welfare workers, or other friends and acquaintances who could have provided information or testimony about him. Because my own case load was extremely heavy, it was physically impossible for me to undertake this investigation myself.

(5) As a consequence, I could not inquire into the complete silence of Mr. Moore's trial counsel with respect to Mr. Moore's childhood circumstances and his youth, his reputation as a son and father and husband, his military record, his reputation in the community where the crime occurred, the factual circumstances of Mr. Moore's life at the time of the crime, or the factual circumstances of the crime itself. I was therefore not

fully aware of inaccuracies or omissions in the presentence report upon which Mr. Moore's sentence was based which have subsequently come to my attention.

(6) Because at the time of the first state habeas proceeding I was not aware of any legal basis upon which to challenge the effectiveness of trial counsel's prformance during the penalty phase of Mr. Moore's capital trial, and futher because I did not engage in any factual investigation in support of such a claim, I did not accede to Mr. Moore's request that I raise the issue of trial counsel's lack of effective assistance at the penalty phase of the trial. Mr. Moore did not voluntarily abandon or waive these claims at any point.

(7) Subsequently, in May of 1984, I have been asked to execute this affidavit, setting forth all the facts herein. I do so now, averring that all I set forth is true and accurate.

/s/
JAMES C. BONNER, JR.

Subscribed and sworn before me,
this the 14th day of May, 1984.

Notary Public
My Commission expires:

DEKALB COUNTY
STATE OF GEORGIA

AFFIDAVIT OF JAMES C. BONNER, JR.

James C. Bonner, Jr., being duly dworn, states that:

(1) I am a member in good standing of the State Bar of Georgia. I make this affidavit for submission in the federal successor habeas corpus proceedings currently pending in the case of *William Neal Moore* v. *Charles Balkcom*. This affidavit should be read as supplementing an earlier affidavit I executed concerning my prior involvement with this case on May 14, 1984.

(2) I served as Mr. Moore's counsel during his state post-conviction proceedings and filed on his behalf his first federal habeas corpus petition in November, 1978. Customary to my practice and in accordance with the exhaustion requirements at that time, I included only claims which had been exhausted in this federal habeas petition.

(3) I am currently aware that Mr. Moore has recently filed a successor petition in the United States District Court for the Southern District of Georgia. I have further been made aware of several claims which have been raised in this petition. I have been informed that Mr. Moore has alleged that the failure of the presentence writer to advise him of his *Miranda* warnings violated his Fifth and Sixth Amendment rights pursuant to *Estelle* v. *Smith*, 451 U.S. 454 (1981). Throughout the entire period of time that I represented Mr. Moore, I was unaware of any federal constitutional

basis upon which to claim that the failure of the probation officer to warn Mr. Moore violated the federal constitution.

(4) I am also aware that Mr. Moore has asserted that his Sixth Amendment right to confrontation was violated by the introduction of the presentence report at the penalty phase of the trial and that he has based this claim upon the case of *Proffitt* v. *Wainwright*, 685 F.2d 1227 (11th Cir. 1982), *modified*, 706 F.2d 311 (1983). Throughout the time that I represented Mr. Moore, I was not aware of a basis in the federal constitution upon which to bring a claim that the introduction of this report at the penalty phase violated Mr. Moore's constitution rights.

(5) Subsequently, in May of 1984. I have been asked to execute this affidavit, setting forth all the facts herein. I do so now, averring that all I set forth is true and accurate.

/s/ James C. Bonner, Jr.
JAMES C. BONNER, JR.

Subscribed and sworn before me,
this the 20th day of May, 1984.

/s/ Illegible Signature
Notary Public

My Commission expires:

APPENDIX J

STATE OF GEORGIA)
) ss.: AFFIDAVIT
COUNTY OF BUTTS)

WILLIAM NEAL MOORE, being duly sworn, states:

1. I am a citizen of the State of Georgia, presently under a sentence of death. I was indicted in the Superior Court of Jefferson County for murder and armed robbery; after pleading guilty to the indictment, I was convicted on June 4, 1974. I was represented at the time of my plea and sentencing by Hinton R. Pierce.

My Interview With The Probation Officer

2. During the period of time from the date of my arrest to the date of my sentencing I was incarcerated in the Jefferson County jail.

3. On one occasion following my conviction but before my sentence had been imposed, a man who said he was from the Probation Office came to see me. he told me he was conducting an investigation for the judge in may case. He did not tell me that the interview with me would be used to gather evidence necessary to determine whether I should be sentenced to death.

4. The investigator asked me many questions about my background, my juvenile record, and the circumstances of the crime. At no point in the interview did he tell me that I had a right to remain silent or let me know that what I was saying would be used against me. He did not tell me that I had a right to an attorney

or that I could stop at any point and demand to see my attorney. He did not ask me whether I waived any of my rights.

5. At no time did the investigator inform me that I had a right to have counsel present during the interview or to consult with counsel prior to the interview. He did not ask me whether I would agree to waive my right to counsel or to consult with counsel.

6. Two years later, while I was incarcerated at the Georgia State Prison in Reidsville, I first saw the presentence report that had been prepared by the probation officer based in part on the interview with me. I discovered then that the report was incomplete in many ways. Much of the information in it is inaccurate. It also does not include many facts which I did share with the investigator.

My Childhood Background

7. I am from Columbus, Ohio and I am the youngest of five children. When I was growing up, my brothers and sisters had left home or were gone most of the time. My mother had multiple sclerosis and my father was in prison from the time I was five until I was eighteen, serving a sentence imposed on him for an incestuous relationship with my sister when she was young. Because we had no regular income, we lived on welfare much of the time. I worked a full shift at a steel mill and at other jobs after school while I was a teenager to ease the financial strain. Though my goal at that time was to finish high school, the conflict between my school schedule and my work schedule became too

great. Also, from the time I was very young I cooked and did the housework because my Mother was not well.

I was the only one in my family who visited my father while he was in prison because my mother got to be too sick and the others had moved away from home. I did try to get to know my father and as best I could kept a relationship open between him and my family.

My Arrest Record

8. As a boy and a very young man, I allowed myself to become involved in occasional petty stealing in the neighborhood. Few young people from my neighborhood avoided such encounters with the law and I regret my inability then to distinguish myself. Apart from the offense for which I was sentenced to death, however, I have no record of arrests or convictions for violence against another human being.

9. I first saw the record of supposed "prior convictions" that was used in the presentence report when my lawyer was preparing my appeal to the Georgia Supreme Court. At that time I saw that the report listed ten separate juvenile offenses. In fact, I was brought before the juvenile court on only four occasions: September 8, 1964, July 25, 1966, July 10, 1967 and September 25, 1968. I had no other involvements with the law beyond occasions when I was picked up by the police and then released. The presentence report, for example, lists "molesting" as one of my prior convictions. In that incident, I was picked up by the police after a grandmother heard me say an obscenity to

another boy. No charges were brought and I was quickly released.

My entire juvenile record is contained in the State of Ohio Youth Commission file which I have attached to this affidavit (though I have no recollection of being put on probation on May 20, 1962). The reports in that file provide the facts of the offenses and of my life at the time of the offenses.

10. During the interview in 1974, I gave the investigator my best recollection of the times I had been picked up by the police as a juvenile. He did not ask me whether I had been charged and convicted for these various offenses.

11. I was not provided with a lawyer at any of my appearances in juvenile court. I was without funds to hire one on my own. I was not given a trial on any of the charges against me. I was not informed that I had the right to cross-examine witnesses who gave evidence against me. Nor was I informed that I had the right to remain silent when speaking with juvenile authorities. Finally, I never waived any of these rights.

My Military Service and Marital Difficulties

12. My brother's return from Vietnam gave me incentive to join the Army. I did so in 1970 and I made a satisfactory record in the three years I was entitled. I received a Promotion for Outstanding Soldiery during basic training in 1970 and I was promoted to E-4 status less than one year after I enlisted. In 1973, I received an Outstanding Service Award with a life-time guarantee of a job in the mail service in West Gemany. I also

completed high school while stationed in Frankfurt, Germany in 1973.

13. I told the man who interviewed me in 1974 that I had severe marital problems and that I was in great financial difficulty immediately prior to the crime. Yet none of the following circumstances were included in the report.

My wife Francine and I were childhood sweethearts, and we married when I was nineteen and Francine sixteen. At that time Francine was the greatest love in my life, a relationship rivaled only by the birth of my son in the spring of 1971. Billy Jr., became the center of my life and, because Francine was very young and unused to such work, I tended to the child's needs. At that time I had been assigned to a post in Frankfurt, Germany where I was finishing my high school credits and acting as a Brigade mail clerk for two companies.

14. When my wife and I returned to this country from my assignment in Germany, we stopped at Columbus on our way to Fort Gordon, Georgia, where I was to report for my next assignment. Two days before we were scheduled to leave for Georgia, my wife announced to us that she would never leave Columbus. I could not convince her to come with me, nor could I postpone reporting to my post and beginning further studies. I reported to Fort Gordon and decided to entrust Billy Jr., to Francine's care. In July, 1973, I lived on the base and arranged to send Francine and my son all of my pay allotment, except for $50.00 per month. Later I arranged for Francine to keep the car, and I visited by plane every weekend I could.

15. During the fall and winter of 1973 and early 1974, Francine fell in with people who were involved in drugs. At first there were only faint signs of this. Francine would promise me she would straighten up, only to fall back again. Then, when I was in the hospital at Fort Gordon for a knee injury, I began to get phone calls from my sisters and my mother-in-law informing me that Francine was with another man who was rumored to be involved in prostitution, drugs and stealing. I was told she was not caring for our child. This was a blow greater than I can state. In late Februry, 1974, after a knee operation, I received the news that made me go to Columbus to bring Billy, Jr., back to Georgia with me: my child, who was two at the time, had been found wandering outside on the street in the cold; he had on another occasion been rescued from a fire in the house of a babysitter who was often drunk. I arranged leave from the hospital, borrowed $250 from the Red Cross, rented a truck, and brought Billy, Jr., to live with me.

16. Because I moved off base to housing fit for my son, I lost my position as a platoon leader and was set back in my training. But what worried me most was Billy's caring for and our financial situation. When I asked the Army to send my allotment to me rather than to Francine, they informed me that such a change would take at least three months. I had $50.00 to tend to the housing, transportation and food for my son and me. I applied for another $250 Red Cross loan but that had not come through.

17. I gave the man who interviewed me many names of people at Fort Gordon to speak with about my record there. To the best of my knowledge he never did

so. The military personnel quoted in the presentence report are not those who had personal knowledge of my performance, and their statements are not consistent with their testimony at my Army Dismissal Hearing on May 16, 1975.

The Circumstances of My Crime

18. I did not tell the man who interviewed me that, as stated in the report, George Curtis and I went over to Mr. Stapleton's house on a number of occasions but that "every time" Curtis got drunk. That statement, attributed to me, is not true. I met George Curtis in the hospital at Fort Gordon during the spring before the crime occurred. George, a former marine, was in the bed across from mine and he told me about a man he knew who always kept $20,000 in his home. He did not tell me that that man was his uncle. The night of the crime, George Curtis had invited me to come to Wrens to his house for a party. George and I get very drunk. George took me over to Fredger Stapleton's house, went in the house with me and showed me where Stapleton slept. But we turned back and I had no intention of returning. We went back to George's and drank even more. Between 11:00 and 12:00 I left George's to go home, but I went to Fredger Stapleton's instead. I was so drunk I didn't care who saw me. I climbed in the front window and went to Stapleton's bedroom door. It was pitch black inside the house. I knocked twice but there was no answer. All of a sudden the door opened, the barrel of his shotgun hit me, then it fired. Out of panic and drunkeness, I fired back. I fired into the dark room where Mr. Stapleton must have been standing.

Not until the next morning did I fully comprehend what I had done.

19. At my sentencing hearing, I was never shown a copy of the presentence report. To my knowledge my lawyer was never shown a copy of the report prior to my sentencing. I first saw the complete report two years after I was sentenced to death and I first saw the record of my prior convictions in the report while my lawyer was appealing my case. I do not state that the assertions in this affidavit are all of the facts relevant to my case, but only that they include basic facts not mentioned or inaccurately presented in the report.

/s/ William Neal Moore
WILLIAM NEAL MOORE

Sworn to and Subscribed before me,
this the 13th day of April, 1984.

/s/ Illegible Signature
Notary Public

JAMES A. RHODES
Governor

DANIEL W. JOHNSON
Director

STATE OF OHIO
YOUTH COMMISSION

SEAL

ORDER OF DISCHARGE

This is the certify that MOORE, William Neal is hereby discharged from further care and custody by the Ohio Youth Commission on November 20, 1969 by reason of Satisfactory Completion of Placement Period.

78189
OYC NUMBER

by /s/ Daniel W. Johnson
DIRECTOR

COPIES: YOUTH
CASE RECORD
COMMITTING COURT

REPORT AND RECOMMENDATION OF REFEREE
IN THE COMMON PLEAS COURT,
DIVISION OF DOMESTIC RELATIONS

FRANKLIN COUNTY, OHIO

In the matter of: JUVENILE BRANCH
William Moore Case No. 80673
Alleged Delinquent Minor JOHNSON
(mj)

A-57874

To the said Court:

I, the undersigned, a duly appointed Referee of this Court, in accordance with the provisions of Section

2151.16 of the Revised Code of Ohio, have heard the testimony of the witnesses and considered all evidence in the above captioned matter and certify the following findings and recommendation to the Court:

That the above matter is within the jurisdiction of the Court.

The parents, guardian or person having custody of the child have been cited to appear as required under Section 2151.28 of the Revised Code of Ohio, and the following persons were present:

Mother:	Margaret Moore
Mr. Blain:	Pepsi Cola Company
Officer:	CPD

William Moore, 17, is before this Court on a charge of tampering with a safety deposit box. The facts have been admitted.

This case came to the attention of this Court through the filing of a Delinquency Affidavit #86171 filed by Probation Officer Johnson which states that on or about the 31st day of August, 1968, he did commit the offense of tampering with a safety deposit box in that he did unlawfully attempt to pry open a vending machine with a pick; said machine the property of a car wash company at 851 E, Jenkins Street, Columbus, Ohio.

The officer stated that on the 31st day of August at about 12:50 he was dispatched to a car wash south of Jenkins and west of Champion on a complaint that someone was breaking into a pop machine, the officer pulled down the lane and saw three boys by the pop machine; but they ran when they saw the officer. The officer got out of his cruiser and chased the boys, but was only able to apprehend two of them.

Mr. Blain of the Pepsi Cola Bottling Company stated that the machine was on a lease to the car wash, and that the repairs amount to about $31.55.

The Probation Department reports that William has been on probation for some period of time. On the 10th day of July, 1967 he was before the Court and placed on a suspended commitment to the Youth Commission. His contacts with this Court include: 1962 B & E, February 1964, theft; July 1966 Petit Larcency; June 22, 1967, B & E and Assault. When William was questioned as to this incident, he stated that he needed some money. There was an attempt to get this boy into some branch of the service, but these attempts failed. The Job Corp and other Vocational programs were contacted also. William's brother would like to take the responsibility of having the boy live with him and finding him a job.

In view of the foregoing facts:

I therefore recommend that the Court: ENFORCE THE COURT ORDER OF JULY 10, 196? (illegible).

I hereby certify that the child and all necessary parties have been duly informed of the foregoing report and recommendation to the Court.

Dated September 25, 1968

Illegible and Approved /s/
Johnson Referee

/s/
CLAYTON W. ROSE, JUDGE
JOHN W. HILL, JUDGE

Case No. A-57874

Name Moore, William Neal — Aff # 80673
Address 1438 Kent Street — Docket No.
Age 16 Sex Race Negro — Officer Cahill-M F Scott
Date of Birth 4-15-51 — Place Columbus, Ohio

Complaint Deliquency - Breaking and entering

Court Record 5-20-62 B & E - Probation
9-8-64 Purse theft - Probation
7-25- 66 - Petit Larceny - Probation

Institutional Experience
Detention Home - total of about three weeks

Agencies

Other Persons Involved Lawrence Jones - on probation to this court
Robert Haynes - on parole to O Y C

CLIENTS STATEMENT

I got off work and went home and then over to Curtis Turner's looking for Larry Jones. Robert Haynes, Curtis, and Larry were all there. We left and walked down Gears to Whittier. We saw this house while we were going up the alley toward Roosevelt and the people were outside. I said, "Look at those people out there cutting grass, do you want to go in?" to Robert. He said, "I don't care." Larry said he would talk to the lady and attract her attention so we could get past her. We hid next to the garage until Larry got the Lady's attention and then we (Robert and I) went into the house.

Robert picked up a radio and then the man came in and ask what we were doing there. He held out his

hand and Robert gave him the radio and then he grabbed Robert's arm. I ran out the door and down the street and then I saw Robert come out of the house with one shoe on and he had a cut on his lip. We went up to Livingston ave and then the police came and got us.

EDUCATION

William is currently enrolled at Roosevelt Junior High where he will be in the 9th grade. This past school year he successfully completed all of his subjects. His attendance was exemplary considering his prior record - he was absent but 5 ½ days due to a virus infection and was not tardy. He had no discipline problems of which I was aware.

RELIGION

Does not attend church regularly

HEALTH

No apparent problems

LEISURE ACTIVITIES

Subject lives across the street from Kent School and quite naturally spends some time there as well as the playground at Fairwood Avenue school. These seem to be primarily a place where he meets his friends rather than a place where he engages in the activities offered.

ASSOCIATES

In spite of repeated warnings, Billy has continued to associate with Robert Haynes (OYC parolee) and Larry Jones. There nefarious activities have included/ drinking beer and in the case of Larry - glue sniffing.

PARENTS

Father - in the Ohio Penitentary

Mother - Mrs. Moore is a rather pathetic case. She is crippled to the degree that it is extremely difficult for her to move around and in addition she has, in the past, been under psychatric care. She doesn't seem to be able to exercise very much control over Billy and looks to her daughter, Mrs. Norma Gripper, for assistance with any major problems that arise. She is very much dependant on Billy as he is the only child left in the home and he runs errands, does chores, and seemingly acts as the man in the house.

SIBLINGS

Sister - Norma Gripper - 30 yrs. - takes an active interest in Billy but is unable to devote a great deal of time to him because of her own family commitments. 1771 Rainbow Pk. 252-2838.

Brother - Terry Moore - currently in the U.S. Army due to the good offices of Mr. Cahill and apparently making a good adjustment. Obviously known to this court.

Brother - James - Has been having a problem adjusting to an early marriage but is currently doing better. Has, on occasion, taken Billy fishing and evidenced other interest in his baby brother.

Sister - Regina Mullins - 26 yrs. -lives out of town and I have never met her. Illegible Village Apt.

CLIENT

I have had Billy on probation since November of 1965. In May of 1966 he was released from probation as it was considered that he had made a good adjustment. He had made the Honor Roll in school, had presented

no problems in school or at home, and was associating with boys who were not predisposed to delinquency. This release was a mistake because without the control he returned to his former companions and subsequently made an appearance in court and was again placed on probation. All was well until Robert Haynes (the youth with whom he was involved on the last and this occasion) returned to the community. One of these boys obviously acts as the catalyst for the other and the end product is some type of delinquent act - usually theft.

Billy is an attractive, pleasant, and well mannered boy who is quite mallable. His intelligence is average or slightly above and he is an excellent worker when so inclined. He is quite fond of his mother although not overtly so. When I told him how broken up she was about this latest involvement he became quite emotionally upset and seemed to be more concerned about her than about what was going to happen to him.

Billy has been employed since May 15th by the NYC at Roosevelt Junior High. He has made a very good record on the job; not having missed a day and is touted by Mr. Kropfhauser (the Head Custodian) as being the best Youth Corps worker that he has had. He spends his money judiciously - buying food and clothes and helping his mother pay the bills.

SUMMARY AND RECOMMENDATIONS

In spite of the fact that Billy has many attributes which are deemed desirable we cannot overlook the fact that this is fourth time that he has been before this court. In addition he has admitted to one other theft and has violated his probation by associating with

undesirables. (He was expressly admonished to avoid Robert Haynes in Sec. 7. - Special Regulations)

On July 25, 1966, he was told by Referee Johnson that if he made another appearance before the court he would be committed to the Ohio Youth Commission.

It is therefor recommended that William Neal Moore be committed to the Ohio Youth Commission but that this commitment be witheld on a day to day basis for the following reasons:

1. He is currently employed and helping his mother who's income is approximately $107.00 dollars per month.

2. Mr. Frank Hammocks, a neighbor who is employed as a custodian at Roosevelt and with whom Billy works, has agreed to assist in Billys supervision.

3. He has become aware of his mother's dependence on him since he is the last child in the home.

M.F. SCOTT for JOHN CAHILL

APPROVED:
/s/ Clifford A. Tyree
Clifford H. Tyree - Supervisor

406 Williams Street
Wrens, Georgia
April 5, 1984

Dear Sir,

I am a great niece of my Uncle Fredger Stapleton. I know Billy Moore has been on death row for ten years. I understand there's a chance his sentence can be reconsidered and I am writing, strongly hoping this is true.

I have never met Billy Moore, but I have read his letters to my mother and my sister and I know he was more than sorry and has been ever since. If he ever wasn't good, I feel he's really changed into someone special.

Those letters touched me in a way I can't really put down on paper. But I know I want to feel like that one day. He has a kind of inner peace I want to have.

You have to wonder if someone has really changed when they say they have. But it's not like Billy came to Momma with his letters after he got death. He was writing them even before he got sentenced while in the Louisville jail. And he has continued them ever since saying he was so very sorry and that the Lord would guide us all. I believed it then and I believe it now: Billy has changed.

If God has forgiven him and if we the family feel he should be forgiven then I feel there is no way he should be executed. It seems just like Billy to forgive George Curtis for running out and turning on him, knowing he would bear it all.

I believe it would be an inspiration if Billy came to Wrens. He is sorry. He is changed with the Lord and

now changes others. Billy Moore deserves a second chance.

Sincerely,
/s/Sandra Farmer
Sandra Farmer

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104 Grace Street
Wrens, GA

March 30th, 1984

Dear Sir,

My name is Mary Jordan and I am related to Fredger Stapleton through my grandfather. I feel strongly about saying what I can and what I know of Billy Moore and what happened ten years ago.

I met Billy when my cousing George Curtis brought him home from Fort Gordon. We'd known soldiers to come out before, but Billy was real special. I can honestly say I have never met a nicer person and would say so still. He was a *good* man. Always respectful, and so kind. Whatever you needed he'd help out - would carry me to the grocery store when I needed to go and would listen to anyone's problems, including mine. I never thought twice about him staying around our houses, he was *very* trusted. I'd even trust him with my little girls, something I wouldn't do with other soldiers.

When George brought him around, I felt leary because I knew my cousin George all my life. George wasn't especially close to anybody in my family but I think I was his favorite cousin while we were growing up. I don't mean George any harm, but I thought Billy was in danger with George and I told him he didn't need to be in the street with George Curtis.

When I heard what happened at Uncle Fredger's and that Billy had been arrested, I just couldn't believe it. Unlike George, Billy wouldn't harm a hair on a dog's back - that's how gentle he was. All I could think of was how Billy brought his little son dressed so nice and how he's bring candy for my kids and lent my brother money even though Billy himself was in the hole.

I feel deeply that Billy should not be executed. I and many others I know really think he should not have been sentenced to die. I really think Billy should be free because even now it hurts me to know he's taking the whole thing by himself. I was around George Curtis a lot. I know how he was - he had to plan it. I believe he told Billy about the house, the money and everything. I encouraged Billy to tell the whole story about George but he wouldn't say anything about anyone else. He wanted to protect his friend. I imagine he felt no one knew him and so he decided to shoulder it all.

I feel nothing about what happened ever came out at the trial. The Judge or no one else ever knew about George or how drunk I've heard people who were with them say they were. I don't know what happened, but I've wanted to know. Like I said before I don't wish my

cousin any ill wi. but he was in it. George was bad through and through, just the opposite of Billy. When I say George was cruel I mean things like torturing little animals and setting his mean dog on people he knew were scared of it. And when he got older I saw some other things like when he beat his girlfriend with a whiskey bottle in the head. After he come back from Viet Nam it seemed he was even crazier.

The judge should have known a lot of things about this crime, I think there should be a trial - let everything out, bring George back to the States and listen to both. I don't see how Billy could have done it himself in any way, but even if after the trial we could say he did, I don't believe they should kill him even then.

All they had in Court was George's people. If I could have I'd have spoken right up for Billy. He should never be executed. He was and still is the nicest person I've known and is so terribly sorry about what happened. Even now in his letters he is spiritually and in every other way repentent.

Billy loved his son, and I know he had bad money problems. I think the Court should look at all of this. Please understand Billy really should not be killed now or ever.

Sincerely,
/s/ Mary E. Jordan
Mary Elizabeth Jordan
